

United States  
Court of Appeals  
for the Ninth Circuit

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MELVIN E. WALLER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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Transcript of Record

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Appeal from the United States District Court  
for the Eastern District of Washington,  
Southern Division

**FILED**

JUN 9 - 1949

**PAUL P. O'BRIEN,**  
CLERK



No. 12232

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**Court of Appeals**  
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## INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Appeal:	
Bail Bond on .....	9
Certificate of Clerk to Transcript of Record on .....	13
Designation of Record on .....	10
Notice of .....	7
Statement of Points on (DC).....	11
Statement of Points and Designation of Rec- ord on (USCA) .....	331
Arraignment and Plea .....	3
Bail Bond on Appeal .....	9
Certificate of Clerk to Transcript of Record on Appeal .....	13
Designation of Record on Appeal (DC).....	10
Designation of Record, Statement of Points and (USCA) .....	331
Excerpts from Court Minutes.....	5
Indictment .....	2
Judgment and Commitment .....	6
Minute Order—Jan. 18, 1949—Arraignment and Plea .....	3

## ii.

	PAGE
Motion for a New Trial .....	4
Names and Addresses of Attorneys.....	1
Notice of Appeal .....	7
Statement of Points on Appeal (DC).....	11
Statement of Points and Designation of Record on Appeal (USCA) .....	331
Transcript of Proceedings .....	15
Exhibits for Defendant:	
14—Certificate of Purchase dated Aug. 19, 1948 .....	327
Admitted in Evidence .....	79
18—Certificate of Purchase, dated Aug. 25, 1948 .....	329
Admitted in Evidence .....	257
Exhibits for Plaintiff:	
1—Producer's Application for Certificate of Eligibility .....	286
Admitted in Evidence .....	24
2—1948 Potato Dealer Agreement dated June 20, 1948 .....	291
Admitted in Evidence .....	24
3—1948 Potato Dealer Agreement dated July 28, 1948 .....	307
Admitted in Evidence .....	24
4—Announcement of Sale of Fresh Irish Potatoes for Livestock Feed.....	308
Admitted in Evidence .....	27

## Exhibits for Plaintiff—(Cont'd)

5—Terms and Conditions for Sale of Fresh Irish Potatoes for Livestock Feed.....	310
Admitted in Evidence .....	39
6—Inspection Certificate .....	314
Admitted in Evidence .....	42
7—Public Voucher—Purchase Programs...	316
Admitted in Evidence .....	42
8—Inspection Certificate—Aug. 24, 1948....	318
Admitted in Evidence .....	43
9—Public Voucher—Purchase Programs— Oct. 7, 1948 .....	320
Admitted in Evidence .....	43
10—Consignee's Receipt, 8/23/48 .....	323
Admitted in Evidence .....	44
11—Consignee's Receipt, 8/24/48 .....	324
Admitted in Evidence .....	44
12—Announcement of Sale of Fresh Irish Potatoes for Livestock Feed .....	325
Admitted in Evidence .....	162
13—Same as Exhibit 5, page.....	310
Admitted in Evidence .....	162
15—Purchase Order dated 8/25/48.....	328
Admitted in Evidence .....	130
17—Cancelled Check No. 3197 dated 8/25/48.	329
Admitted in Evidence .....	132
19—Trip Record Report, page marked Fed- eral No. 25 .....	330
Admitted in Evidence .....	262

## Transcript of Proceedings—(Cont'd)

Instructions, Court's ..... 267

Ruling of Court on Motion for Judgment of  
Acquittal ..... 176

## Witnesses for Defendant:

## Adamson, Robert

—direct ..... 232

—cross ..... 236

## Farwell, H. W.

—direct ..... 230

—cross ..... 231

## Grimm, Robert M.

—direct ..... 227

—cross ..... 228

## Porter, K. S.

—direct ..... 248

—cross ..... 250

## Pulley, Alfred M.

—direct ..... 250

—cross ..... 252

## Rossier, S. A.

—direct ..... 245

—cross ..... 247

## Transcript of Proceedings—(Cont'd)

## Witnesses for Defendant—Cont'd)

## Sanders, J. D.

—direct .....	236
—cross .....	238
—redirect .....	239, 240
—recross .....	240

## Smith, R. C.

—direct .....	240
—cross .....	242

## Waller, Ed

—direct .....	253
—cross .....	259

## Waller, Melvin E.

—direct .....	183, 189
—cross .....	208
—redirect .....	221

## Williamson, Charles F.

—direct .....	180
—cross .....	183, 223

## Witnesses for Plaintiff:

## Bruce, R. S.

—direct .....	122
—cross .....	127

## Transcript of Proceedings—(Cont'd)

## Witnesses for Plaintiff—(Cont'd)

## Caruso, Joseph V.

—direct ..... 129

—cross ..... 133

## Carver, Fred E.

—direct ..... 84

—cross ..... 93

## Catlin, John

—direct ..... 65

—cross ..... 67

## Chinn, John

—direct..... 19, 25, 40, 41

—cross ..... 47

—redirect ..... 54

—recross ..... 55

## Garner, William G. H.

—direct ..... 165

—cross ..... 173

## Garrecht, U. S.

—direct ..... 103, 108

—cross ..... 110

## Transcript of Proceedings—(Cont'd)

## Witnesses for Plaintiff—(Cont'd)

## Kerby, John B.

—direct ..... 56

—cross ..... 59

## Klassen, D. C.

—direct ..... 114

—cross ..... 119

## Middleton, James

—direct ..... 158

—cross ..... 162

## Robinson, Kenneth

—rebuttal, direct ..... 260

—cross ..... 263

—redirect ..... 265, 267

—recross ..... 266, 267

## Spaulding, James V.

—direct ..... 133, 150

—cross ..... 153

## Williamson, Charles F.

—direct ..... 71

—cross ..... 74

—redirect ..... 82

—recross ..... 84

Verdict ..... 3





NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD

HARVEY ERICKSON,  
United States Attorney.

FRANK R. FREEMAN,  
Assistant United Attorney,  
Federal Building,  
Spokane, Washington,

Attorneys for Plaintiff and Appellee.

WALTER J. ROBINSON, JR.,  
Miller Building,  
Yakima, Washington, and

JAMES P. SALVINI,  
Sunnyside, Washington,

Attorneys for Defendant and Appellant. [1\*]

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\* Page numbering appearing at foot of page of original  
certified Transcript of Record.

In the District Court of the United States for the  
Eastern District of Washington,  
Southern Division

No. C-4217

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MELVIN E. WALLER,

Defendant.

### INDICTMENT

VIO: Pub. Law 806—80th Congress, Sec. 15, Par.  
C. Theft of Property of Commodity Credit Cor-  
poration.

The Grand Jury charges:

That on or about the 23rd day of August, 1948,  
at Sunnyside, in the Southern Division of the  
Eastern District of Washington, Melvin E. Waller  
did wilfully steal, remove, and convert to his own  
use, property owned by the Commodity Credit Cor-  
poration, to-wit: sixteen (16) tons of White Rose  
Irish potatoes.

Dated this 21st day of December, 1948.

A True Bill.

/s/ E. D. (Illegible),  
Foreman.

/s/ FRANK R. FREEMAN,  
Asst. United States Attorney.

Presented to the Court by the Foreman of the

Grand Jury, in open Court, in the presence of the Grand Jury and filed in the United States District Court for the Eastern District of Washington, Dec. 21, 1948.

/s/ A. A. LaFRAMBOISE,  
Clerk. [2]

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[Title of District Court and Cause.]

### ARRAIGNMENT AND PLEA

Now, on this 18th day of January, 1949, into court comes the defendant, Melvin E. Waller, with counsel, Walter J. Robinson, for arraignment under the Indictment heretofore filed against him, and being interrogated by the Court as to his plea thereto, defendant answers that he desires to enter a plea of Not Guilty, which plea is received by the Court and ordered entered on the records of the Court.

[Endorsed]: Filed Jan. 18, 1949. [3]

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[Title of District Court and Cause.]

### VERDICT

We, the Jury in the Above-Entitled Cause, find the defendant, Melvin E. Waller, Guilty as charged in the Indictment.

/s/ JOHN V. WHITEMAN,  
Foreman.

[Endorsed]: Filed Feb. 16, 1949. [312]

[Title of District Court and Cause.]

### MOTIONS FOR A NEW TRIAL

Comes now the defendant above named and moves the Court to grant him a new trial upon the ground that the same is required in the interest of justice.

Without waiving the foregoing motion, and in the alternative, the defendant moves the Court to grant him a new trial for the following reasons:

1. The Court erred in denying defendant's motion for acquittal made at the close of the evidence offered by the government.

2. The Court erred in denying defendant's motion for acquittal made at the close of all the evidence, if said motion is denied.

3. The verdict is contrary to the weight of the evidence.

4. The verdict is not supported by substantial evidence.

5. There were irregularities in the proceedings of the Court, jury, and plaintiff, orders of the Court, and abuse of discretion by which the defendant was prevented from having a fair trial.

6. The Court erred in admitting plaintiff's Exhibit 12, to which objection was made.

7. The Court erred in charging the jury and in refusing to charge the jury as requested.

8. There were errors in law occurring at the trial and called to the Court's attention or excepted

to by the defendant at the time [313] said errors were made.

Dated this 21st day of February, 1949.

/s/ JAMES P. SALVINI,  
/s/ SAVINI & ROBINSON,  
Attorneys for Defendant.

Copy mailed to Mr. Harvey Erickson, United States Attorney, this 21st day of February, 1949.

[Endorsed]: Filed Feb. 21, 1949. [314]

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## EXCERPTS FROM COURT MINUTES

November, 1948, Term. March 11, 1949. 17th day.  
Court Convened at 10:00 a.m.

Present: Hon. Sam M. Driver, Judge; A. A. La-Framboise, Clerk; Stanley Taylor, Reporter; Harvey Erickson, U. S. Attorney; R. R. Isaacs, Deputy U. S. Marshal; Charles W. Carlile, Deputy U. S. Marshal; Ray Kurtz, U. S. Probation Officer.

## PROCEEDINGS

\* \* \* \*

[Title of Cause.]

Defendant's motion for judgment of acquittal argued by Walter R. Robinson for defendant. Motion denied.

Defendant's motion for new trial argued by Walter R. Robinson for defendant. Motion denied.

It is stipulated by counsel that copy of plaintiff's exhibit 19 may be substituted and original of said exhibit is withdrawn by defendant.

The Court thereupon sentenced defendant to One

Year and Six Months and to pay a fine of \$600.00.

Bail bond pending appeal is fixed at \$1000.00 and defendant to remain on present bail and execution of sentence suspended until time for appeal has expired. Judgment and Sentence signed. [315]

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District Court of the United States for the Eastern  
District of Washington, Southern Division

No. C-4217

UNITED STATES OF AMERICA,

vs.

MELVIN E. WALLER.

### JUDGMENT AND COMMITMENT

On this 11th day of March, 1949, came the attorney for the government and the defendant appeared in person and by counsel, Walter J. Robinson and J. B. Salvini.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a verdict of guilty of the offense of violation of Public Law 806, 80th Congress, Section 15, Paragraph C—Theft of Property of the Commodity Credit Corporation, as charged in the Indictment, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby com-



mitted to the custody of the Attorney General or his authorized representative for imprisonment for a period of One (1) Year and Six (6) Months and to pay a Fine of \$600.00 without costs.

It Is Adjudged that said defendant be further imprisoned until payment of said Fine or until said defendant is otherwise discharged as provided by law.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ SAM M. DRIVER,

United States District Judge.

Presented by

HARVEY ERICKSON,

U. S. Attorney.

[Endorsed]: Filed March 11, 1949. [316]

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Name and Address of Appellant—Melvin E. Wal-  
ler, Sunnyside, Washington.

Name and Address of Appellant's Attorneys—  
John Gavin and Walter J. Robinson, Jr., 409  
Miller Building, Yakima, Washington, and James  
P. Salvini, Sunnyside, Washington.

Offense—Theft of property owned by the Com-  
modity Credit Corporation in violation of Public

Law 806—80th Congress, Section 15, Paragraph C.

Concise Statement of Judgment or Order Giving Date, and any Sentence—Judgment of conviction and sentence of \$600.00 fine and eighteen months' imprisonment. Judgment dated March 11, 1949.

The defendant is on bail and not now confined.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above-stated judgment.

Dated March 17, 1949.

/s/ MELVIN E. WALLER,  
/s/ WALTER J. ROBINSON, JR.,  
Of Counsel for Appellant.

The above notice of appeal was filed with the Clerk of the above-entitled Court in duplicate on March 17, 1949.

ARAM A. LaFRAMBOISE,  
Clerk.

By /s/ THOMAS GRANGER,  
Deputy Clerk.

Copy mailed to Harvey Erickson, U. S. Attorney, March 17, 1949. A. A. LaFramboise, Clerk.  
By Thomas Granger, Deputy.

[Endorsed]: Filed March 17, 1949. [317]



[Title of District Court and Cause.]

## BAIL BOND ON APPEAL

Know All Men by These Presents, That the undersigned Melvin E. Waller herewith deposits the sum of One Thousand Dollars (\$1,000.00), as a bond for the appearance of said Melvin E. Waller before said Court at the time herein specified.

Signed and sealed this 17th day of March, 1949.

The Condition of the above obligation is that whereas, a judgment of conviction of a felony charge has been filed against Melvin E. Waller with the United States District Clerk for the Eastern District of Washington, adjudging him to be guilty of the offense of having stolen property owned by the Commodity Credit Corporation, and he has appealed to the Court of Appeals for the Ninth Circuit from such judgment of conviction and the sentence thereafter imposed;

Now, Therefore, if the said Melvin E. Waller shall appear before the United States District Court at Yakima, Washington, at such time as he is notified so to do by the Circuit Court and from day to day thereafter as he is directed so to do, and shall hold himself subject and amenable to the orders of said District Court until finally discharged by said Court or until committed to the custody of the Attorney General or his authorized representative for imprisonment, then this obligation to become null and void, and the money herewith deposited as bail as aforesaid, to be returned under

order of this Court, otherwise to remain in full force and effect and said bail to become subject to forfeiture to the United States of America.

/s/ MELVIN E. WALLER.

Approved: March 18, 1949.

/s/ SAM M. DRIVER,  
U. S. Judge.

Signed in the presence of:

/s/ WALTER J. ROBINSON, JR.

Notices relative to this case will reach defendant if mailed to the following address: c/o Herrett Trucking Co., Inc., Sunnyside, Wn.

[Endorsed]: Filed March 17, 1949. [318]

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[Title of District Court and Cause.]

## DESIGNATION OF CONTENTS OF RECORD ON APPEAL

To the Clerk of the above-entitled District Court:

Comes now the above-named defendant, who has appealed to the United States Court of Appeals for the Ninth Circuit in the above-entitled cause, and designates the following as the portions of the records, proceedings and evidence to be contained in the record on appeal:

1. Indictment, filed December 21, 1948.
2. Records of Court showing arraignment and plea of "not guilty."
3. Reporter's complete transcript of trial proceedings.
4. All exhibits.

5. Records of Court showing verdict of jury.
6. Records of Court showing defendant's motion for judgment of acquittal at close of all evidence in the case.
7. Defendant's motion for a new trial, filed February 21, 1949.
8. Records of Court showing denial of motions for judgment of acquittal and for new trial.
9. Judgment and commitment.
10. Notice of appeal.
11. This designation of records and affidavit of service by mail.
12. Statement of points. [319]

You will please include this data in making up the record on appeal.

Dated April 14, 1949.

/s/ WALTER J. ROBINSON, JR.,  
Of Counsel for Defendant  
(Appellant).

Copy mailed to Hon. Harvey Erickson, United States Attorney.

[Endorsed]: Filed April 14, 1949. [320]

---

[Title of District Court and Cause.]

### STATEMENT OF POINTS

Comes now the defendant above named as appellant and sets forth the following statement of the points upon which he intends to rely on the appeal:

## 1.

The Court erred in denying the defendant's motion for judgment of acquittal made at the close of the evidence offered by the Government.

## 2.

The Court erred in denying defendant's motion for acquittal made at the close of all the evidence.

## 3.

The Court erred in over-ruling the objection on behalf of the defendant to the receipt of Government Exhibit 12 in evidence.

## 4.

The Court erred in charging the jury to the objectionable portion of which charge the defendant objected.

## 5.

The Court erred in denying the defendant's motion for a new trial.

## 6.

The verdict is contrary to the weight of the evidence.

## 7.

The verdict is not supported by substantial evidence. [321]

## 8.

There were irregularities in the proceedings of the Court and abuse of the Court's discretion by which

the defendant was prevented from having a fair trial.

Dated this 14th day of April, 1949.

/s/ WALTER J. ROBINSON, JR.,  
Of Counsel for Defendant  
(Appellant).

Copy mailed to Hon. Harvey Erickson, United States Attorney.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed April 14, 1949. [322]

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[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

I, A. A. LaFramboise, Clerk of the United States District Court for the Eastern District of Washington, do hereby certify that the foregoing type-written pages numbered 1 to 323, inclusive, to be the original indictment, the original arraignment and plea of not guilty, the original reporter's transcript of trial proceedings, the original exhibits 1 to 19, inclusive, the original verdict, the original motion for new trial, a true and correct copy of the records of court showing denial of motions for judgment of acquittal and for new trial, the original judgment and commitment, the original notice of appeal, the original bail bond on appeal, the original designation of contents of record on appeal and affidavit of service by mail, and the original statement of points in the above-entitled cause, as are necessary to the hearing of the appeal therein as

called for by the designation of the record on appeal filed by counsel for the Appellant, Melvin E. Waller, and that the same constitutes the record on appeal from the judgment of the District Court of the United States for the Eastern District of Washington to the United States Court of Appeals for the Ninth Circuit.

I further certify that the fees of the Clerk of this Court for preparing and certifying the foregoing record as called for in Appellant's designation of record on appeal amount to \$2.50 and the same has been paid in full by Walter J. Robinson, Jr., attorney for said Appellant.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of said District Court at Yakima, Washington, in said District, this 22nd day of April, 1949.

(Seal)

A. A. LaFRAMBOISE,  
Clerk of said District Court.



In the District Court of the United States for the  
Eastern District of Washington,  
Southern Division

No. C-4217

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MELVIN E. WALLER,

Defendant.

RECORD OF PROCEEDINGS  
AT THE TRIAL

Be It Remembered, that on the 14th day of February, 1949, the above-entitled cause came regularly on for trial in the above Court at Yakima, Washington, before the Honorable Sam M. Driver, Judge of said Court, sitting with a jury.

The plaintiff appearing by Harvey Erickson, United States Attorney for the Eastern District of Washington, of Spokane, Washington.

The defendant appearing personally and by his attorneys, Walter J. Robinson, Jr., of Yakima, Washington, and James P. Salvini, of Sunnyside, Washington.

Whereupon, the following proceedings were had and done, to wit: [8\*]

A jury of twelve was duly impaneled and sworn to try the case, being the following named persons:

1. Henry B. Marks; 2. Grace Riggs; 3. George D.

---

\* Page numbering appearing at foot of page of original certified Reporter's Transcript.

Ennis; 4. Theodore T. Edmison; 5. Joseph E. Ditter; 6. John V. Whitehair; 7. Reuben May; 8. Emerald C. Sullivan; 9. Wilfred G. Farley; 10. Austin Johnson; 11. Maude Frear; 12. Wayne Smith.

(Short recess.)

(Whereupon, the following proceedings were had without the presence of the jury.)

Mr. Robinson: The jury isn't in the box, but we wish to invoke the rule of exclusion of the witnesses at this time, your Honor.

The Court: All right; are the witnesses all in the courtroom, Mr. Erickson?

Mr. Erickson: I don't know how many of them are here.

The Court: And how about your witnesses, Mr. Robinson, are they here? [9]

Mr. Robinson: Well, I don't think any of them are. Some of the ones I'll call are also subpoenaed by the government.

The Court: The rule, of course, will apply to both sides. However, the United States Attorney will have the option of having one witness remain with him. Who do you wish to remain?

Mr. Erickson: Mr. Garner.

The Court: Is he to be a witness?

Mr. Erickson: Yes, William G. H. Garner.

The Clerk: The names as I have them for the government witnesses are Fred Carver, U. S. Garrecht, Charles F. Williamson, D. C. Klassen, R. S. Bruce, James Spaulding, James Middleton, Homer



Waller, Joe V. Caruso, John Catlin, John Chinn, and William G. H. Garner. Mr. Williamson is not here. That's all the witnesses I have subpoenas on.

Mr. Erickson: I think we have another witness, J. B. Kerby.

The Clerk: Have you any other witnesses, Mr. Robinson, that you can give me the name of, please?

Mr. Robinson: I think Mr. Ross Lynch isn't here.

The Clerk: No, he's not here.

Mr. Robinson: None of our witnesses are in the courtroom.

(Whereupon, Fred Carver, U. S. Garrecht, D. C. Klassen, R. S. Bruce, James Spaulding, James Middleton, Homer Waller, Joe V. Caruso, John Catlin, John Chinn, William G. H. Garner, and John B. Kerby were sworn as witnesses on behalf of the [10] plaintiff in this cause.)

The Court: Now, the rule has been invoked here that witnesses must remain out of the courtroom until you've testified and it's clear you're not to testify again, so that you'll all remain out in the corridor and the bailiff will let you know when to come in and testify, and then you'll go out again. In the meantime you shouldn't talk about what your testimony will be, and after you've testified, don't say what you've testified to. That doesn't mean, of course, that you can't talk to the attorneys. I'll ask the attorneys on both sides, if there are other witnesses, to tell them what the rule is, and not to come

into the courtroom. All right, the witnesses may be excused now.

(Whereupon, all the witnesses who were sworn, except Mr. Garner, retired from the courtroom.)

The Court: Anything else before we call in the jury? Call in the jury.

(Whereupon, the following proceedings were had within the presence of the jury.)

(Whereupon, Mr. Erickson made an opening statement to the jury on behalf of the plaintiff.)

(Whereupon, Mr. Robinson made an opening statement to the jury on behalf of the defendant.)

The Court: While we're waiting for the witness, members of the jury, I think this is a good time to tell you that [11] we'll let you separate during the recess and overnight adjournments, but you're not to talk about the case either among yourselves or with anybody else until the trial is concluded, and I think in this type of case it would be best for you to refrain from reading any newspaper accounts about it or listening to any radio accounts. I don't think they would affect you, but it's best to not listen to them, and then you can be sure you're not being influenced by anything except the evidence in the case and the Court's instructions, and I might say, too, that the Court tries to have these cases proceed in an orderly way according to the rules we apply, and from time to time it's necessary for the Court to rule on objections, or inter-

rupt counsel and make comments about the way he's conducting himself. I want you to know that doesn't indicate anything at all except that the court is trying to run the case in an orderly way, because the Court has no opinion and is not trying to express any about the evidence or the conduct of counsel.

JOHN CHINN,

called as a witness on behalf of the plaintiff, having been duly sworn, testified as follows:

Direct Examination

By Mr. Erickson:

Q. State your name, please.

A. John Chinn.

Q. And what is your business, Mr. Chinn?

A. I'm the secretary to the Yakima County Agricultural [12] Conservation Association.

Q. And where is your office?

A. 201 Old Court House.

Q. Do you have to do—does your work have to do with the Production Marketing Administration?

A. It does.

Q. And the sale of surplus potatoes?

A. I'm the buying and shipping representative of the Commodity Credit.

Q. And the Commodity Credit Corporation has the disposal program of potatoes, is that right?

A. We do.

Q. And you're the representative in Yakima?

A. I am.

(Testimony of John Chinn.)

(Whereupon, eligibility certificate, C. F. Williamson, was marked Plaintiff's Exhibit No. 1 for identification.)

(Whereupon, dealer's agreement, Simmons & Sons, was marked Plaintiff's Exhibit No. 2 for identification.)

(Whereupon, dealer's agreement, Pasco Growers, was marked Plaintiff's Exhibit No. 3 for identification.)

(Whereupon, contract with C. F. Williamson was marked Plaintiff's Exhibit No. 4 for identification.)

Q. (By Mr. Erickson): Mr. Chinn, I'll hand you plaintiff's [13] identification 1, and ask you to state what that is.

A. This is an eligibility certificate of application for growing potatoes.

Q. Is that eligibility certificate in your official records and files of C. F. Williamson for 1948?

A. It is.

Q. Signed by Mr. Williamson? A. It is.

Q. And part of your records? A. It is.

Mr. Erickson: I offer plaintiff's 1.

The Court: Let Mr. Robinson see it first.

Q. (By Mr. Erickson): I'll hand you plaintiff's identification 2 and ask you what that is.

A. This is a dealer's agreement for eligible dealers to handle surplus potatoes for Commodity Credit.

(Testimony of John Chinn.)

Q. In that case, that agreement is between whom?

A. This agreement is for Mr. Simmons and Sons, eligible dealers.

Q. And signed by Simmons and Sons, is that correct?        A. It is.

Q. And that's the signature of Claus Peters, do you recognize his signature?        A. I do.

Q. Is that part of the official records and files and is that [14] the contract between Simmons and Sons and the Commodity Credit Corporation?

A. It is.

Mr. Erickson: I offer 2 in evidence.

Q. (By Mr. Erickson): I hand you plaintiff's identification 3 and ask you to state what identification 3 is.

A. Potato dealer's agreement. It's the same as the other one, only this one is for Pasco Growers.

Q. Signed by the Pasco Growers?

A. Signed by their representative.

Q. Is it the official contract appearing in your files for the 1948 season?        A. It is.

Q. Between the Commodity Credit Corporation and the Pasco Growers?        A. It is.

Mr. Erickson: I offer 3.

Q. (By Mr. Erickson): I hand you plaintiff's identification——

Mr. Robinson: Your Honor, these are a little different category from the others. I wish to object to the introduction of identifications 1, 2 and 3 on the ground that they're irrelevant and immaterial to any phase of this case whatsoever. Identification

(Testimony of John Chinn.)

1 is Mr. Williamson's—not his purchase of the potatoes involved here, but his sale of other potatoes to the government, [15] which have no connection whatsoever——

The Court: I think I'll excuse the jury until 1:30, and then we can talk this over in their absence. You may retire, members of the jury.

(Whereupon, the following proceedings were had without the presence of the jury.)

The Court: Now, I might be better able to understand the argument if I knew what these are. What's the purpose of introducing these?

Mr. Erickson: The purpose is to give the background to show that these are Commodity Credit Corporation potatoes handled in the usual way by the warehouses handling potatoes for the Commodity Credit Corporation. These are for the identical potatoes later alleged to have been stolen.

The Court: These are the same potatoes?

Mr. Erickson: Yes, these papers are part of the chain of title showing the government's chain of title to the potatoes, beginning with the grower who raised them down to the time the grower got them back again for stock feed.

Mr. Robinson: The first identification there is the contract under which Williamson grows potatoes, and has nothing to do with the potatoes that were involved here which the government's—— [16]

The Court: Isn't that a contract with the Commodity Credit Corporation, that number 1?



(Testimony of John Chinn.)

Mr. Robinson: Well, it's a contract with the Yakima County Agricultural Conservation Committee.

Mr. Erickson: There's a certification on the bottom of it that this is to certify that the producer has agreed to the established conditions for participating in the potato price program. The County Agricultural Conservation Committee is an agent of the Commodity Credit Corporation to administer the program in Yakim, and first we have to show——

The Court: The purpose of that is to show Mr. Williamson was in the program?

Mr. Erickson: Yes.

The Court: And raised these potatoes pursuant to the program?

Mr. Erickson: Yes.

Mr. Robinson: The ones purchased for stock feed had no connection with the ones sold to the government. There was no necessary connection or arrangement there at all. Mr. Erickson stated to the jury that the stock feeder buys back potatoes from the government under a contract I think he's going to offer subsequently, which we feel is certainly relevant, but this and the matter of the warehouses' arrangements or contracts with the government [17] hasn't anything to do with this matter here, it seems to me.

Mr. Erickson: This is purely background, of course, to show the beginning of the title of the potatoes, who grew them, how they were traced down and finally sold back for stock feed potatoes. These are the same potatoes.

The Court: Well, I think I'll admit them. I think

(Testimony of John Chinn.)

they have a background relevancy here. You haven't identified 4, have you?

Mr. Erickson: No.

The Court: We can't take any testimony in the absence of the jury, so I'll admit 1, 2 and 3, and we may as well recess now until 1:30.

(Whereupon, Plaintiff's Exhibits Nos. 1, 2 and 3 for identification were admitted in evidence.)

[Printer's Note: Plaintiff's Exhibit No. 1 is set out in full at page 286 of this printed Record.]

[Printer's Note: Plaintiff's Exhibit No. 2 is set out in full at page 291 of this printed Record.]

[Printer's Note: Plaintiff's Exhibit No. 3 is set out in full at page 307 of this printed Record.]

The Court: I'd like to have counsel step into my chambers for a few minutes before we go out to lunch, just after we recess here.

(Whereupon, the Court took a recess in this cause until 1:30 o'clock p.m.)

Yakima, Washington

Monday, February 14, 1949—1:30 o'clock p.m.

(All parties present as before, and the trial was resumed.)

(Whereupon, the following proceedings were had within the [18] presence of the jury.)



(Testimony of John Chinn.)

Direct Examination

(Whereupon, Mr. Erickson read a portion of Exhibit 2 to the jury.)

Q. Now, I'll hand you plaintiff's identification 4, and ask you what that is?

A. This is a contract for sale of fresh potatoes for livestock feed.

Q. To whom? A. C. F. Williamson.

(Whereupon, Form VF 111, terms and conditions, was marked Plaintiff's Exhibit No. 5 for identification.)

Q. I'll hand you plaintiff's identification 5, and ask you what that is?

A. This is form VF 111; it's in regards to the terms and conditions of potatoes sold as livestock feed.

Q. Fresh Irish potatoes for livestock feed?

A. Yes, sir.

Q. Is plaintiff's identification 5 the one that is referred to in plaintiff's identification 4?

A. I don't know whether I've got you right on that or not.

Q. Well, let me ask you again, I'll hand you plaintiff's identification 4, and ask you to examine that and plaintiff's identification 5. [19]

A. Right.

Q. Does plaintiff's identification 4 refer to plaintiff's identification 5? A. It does.

Mr. Erickson: I offer both 4 and 5.

Mr. Robinson: I'd like to take them up separately, if the Court please.

(Testimony of John Chinn.)

Voir Dire Examination

By Mr. Robinson:

Q. Mr. Chinn, with reference to plaintiff's identification 4, that purports to be an announcement, with mimeographed signature of Mr. Claus Peters, and then an order, is that correct?

A. This is a contract signed by Mr. Peters; is that what you mean?

Q. It's headed with the words "Announcement of Sale" how to obtain potatoes, signed above Mr. Peters' signature, and then the word "Order" appears on it. The date appearing after Mr. Williamson's typed name is August 19, is that correct?

A. Yes.

Q. Was this contract completed on August 19?

A. You mean that he received the potatoes at that time?

Q. No; were the provisions that are typed in filled in on that date? A. Yes. [20]

Q. Mr. Williamson signed this in blank on that date, did he not? A. I don't know.

Q. It wasn't filled in at the time that he signed it, was it? A. I don't know; no, I don't.

Q. You will observe—was all the typing done at the same time? A. On those contracts?

Q. Yes.

A. Some of them were and some they weren't.

Q. Some were typed in later on? A. Right.

Q. Some were signed in blank and typed in at a later time, is that not correct? A. Yes.

Q. Please notice the right portion of this, Mr.

(Testimony of John Chinn.)

Chinn, and tell the jury if this contract doesn't cover potatoes purchased on September 22?

A. That's the date that's on there.

Q. In other words, this instrument purports to be a contract covering potatoes in which you acknowledge receipt of monies paid on August 19 and September 22, isn't that correct? A. Yes.

Q. Mr. Williamson never received a copy of this, did he? [21] A. Yes.

Q. When?

A. I don't know the date, but they're supposed to receive a copy of all cattle feed contracts.

Q. He didn't receive a copy until after September 22, did he?

A. I don't know when he received it. The contract goes to the state office and then it's sent out.

Mr. Robinson: No objection.

The Court: It will be admitted.

(Whereupon, Plaintiff's Exhibit No. 4 for identification was admitted in evidence.)

[Printer's Note: Plaintiff's Exhibit No. 4 is set out in full at page 308 of this printed Record.]

Voir Dire Examination—(Continued)

By Mr. Robinson:

Q. Mr. Chinn, with reference to plaintiff's identification 5, which purports to be form FV 111, I'll show it to you so you'll know I'm not fooling you, no copy of that was ever given to the purchaser of stock feed, was it? A. No.

Q. No copy of it was ever read to him at the time that he signed the blank which is the contract,

(Testimony of John Chinn.)

was it? A. State that question again.

Q. No copy of Form 3, I think that's what you usually call it, isn't it?

A. It's Form FV 111.

Q. Is it 111, or Roman numeral III?

A. Well, we call it 111. [22]

Mr. Robinson: Just so we can get our nomenclature straight, your Honor.

The Court: All right.

Q. (By Mr. Robinson): With reference to form FV 111, that was not read to the grower at the time he signed his contract for the potatoes, was it?

A. Neither was the contract read to him.

Q. Nothing was read to him?

A. The contract was given to him and he read the contract, and the forms FV 111 was given to them if they wanted it; in several cases they asked for it: it was laying right there.

Q. Did you mimeograph them?

A. Some of them we did; some of them were sent out from the state office, we ran out. Not those 111.

Q. You didn't distribute those to the purchasers of the potatoes, did you? A. No.

Q. You didn't read them to any of the purchasers?

A. No.

Q. When the purchaser came in to your office during the month of August you fellows were busier than everything trying to move these potatoes through, weren't you? A. Yes.

Q. That was a darn busy season, wasn't it? [23]

A. It was.

Q. You were swamped with potatoes that were

(Testimony of John Chinn.)

delivered to the government, weren't you, at that time?      A. Yes.

Q. As a result, when the contract order, exhibit 4, which is the contract, was executed, it was usually signed by the purchasers in blank and there was no discussion of the terms at all, was there?

A. Yes, there was.

Q. In how many cases was there any discussion of the terms of Form FV 111 at the time the grower executed the order form? In how many cases during the month of August?

A. I couldn't tell you, because——

Q. More than three?

A. ——there was seven clerks taking care of that rush, but we took the information, instead of taking time to type it, we wrote all the information on a slip and attached it to the contract, after the man read his contract, and then it was taken in and typed afterwards. We didn't have time at the time.

Q. You mean you took the information that was on the face of the order form, the name, date, place of residence, and delivery schedule?

A. And delivery schedule.

Q. Yes; that's the information you took off? [24]

A. Yes.

Q. You signed the order in blank and you put this information that's contained on the order on a slip of paper, and sent it in to the typist to type up?

A. In some cases.

Q. Yes, and eventually, and in the case of Mr. Williamson after September 22, you sent a copy back down to him?



(Testimony of John Chinn.)

A. A copy went to the state office for approval and was sent back to us and we gave it to him.

Q. In the case of Mr. Williamson it wasn't by the very wording until after September 22, was it?

A. I think so.

Q. Now, with reference to the form FV 111, government's identification 5, you didn't reproduce any of those by any means at all? A. No.

Q. Did you have any mimeographed ones in your office, or multigraphed ones? A. No.

Q. Did you have more than one printing of those forms in your office that you know about?

A. We had several copies; not enough to take care of everybody.

Q. How many growers were altogether involved in this, how many growers and purchasers of potatoes were altogether involved [25] through your office last season? A. Cattle feed?

Q. Yes. A. I do not have the exact amount.

Q. Would you say there was over 5,000, or under?

A. Under.

Q. Under 1,000? A. I'd say yes.

Q. Pretty close to 1,000, possibly?

A. Well, I have no idea. We have a lot of them.

Q. A lot of them. Now, of all of those who purchased potatoes from you by filling out plaintiff's exhibit 4, the contract form, how many did you personally read the provisions of FV 111 to?

A. I didn't read it to anyone.

Q. How many did you personally discuss the provisions in FV 111 relating to any title to the potatoes?

A. A number of persons after reading the con-

(Testimony of John Chinn.)

tract asked for that; it was right there available to them; we handed it to them.

Q. It was in a cabinet, was it not, in your office?

A. It was not, it was right on the main counter where they signed their contract.

Q. When they came up to sign their contract someone waited on them? [26]

A. That's right.

Q. You or one of your assistants?

A. That's right.

Q. And when you did that you had a copy of these orders, identification 4, didn't you? A. Yes.

Q. That was the instrument they had to sign?

A. Yes.

Q. That was the one to which reference was made as to quantity, price, and delivery location, wasn't it?

A. Yes.

Q. And in almost all cases that was the only one to which any reference was made in your conversation with the purchaser, wasn't it?

A. We always gave them the contract to read, and after reading the contract, this was available there for them to read if they wanted it.

Q. As a matter of fact, when they came in to talk to you, you didn't give them the contract to read, you handed it out and they'd say they wanted some potatoes for livestock feed? A. Yes.

Q. And you'd say, "Well, how many do you want?" is that correct?

A. We'd ask them if they was a cattle feeder and was [27] legitimately feeding cattle.



(Testimony of John Chinn.)

Q. And when they said yes, you'd say, "How many do you want?" A. That's right.

Q. And asked them how they wanted them delivered, and where? A. That's right.

Q. And where they wanted to pick them up; and after they made that notation you'd hand it to them to sign?

A. Hand it to them and say, "Here's your contract."

Q. And they'd hand you the money?

A. Some would, and some wouldn't.

Q. Well, they had to pay before you'd authorize delivery?

A. Well, a lot of them didn't know their checks had to be made out to the United States Government, so we handed them the contract and they went after the check.

Q. The next step was they handed the money over to you and you took the contract back and attached a note and waited on the next purchaser, didn't you?

A. That's right.

Q. Now, in the case of Mr. Williamson there was neither any discussion of identification 5, which is form 111, or did he read it or was shown it, isn't that correct?

I. I wouldn't know whether he read it or anything about it. I don't know if I even waited on him.

Q. You don't recall him coming in there at all?

A. I recall him coming in, but I don't know who waited on him. [28] There was six or seven just waiting on people all day long.

Q. When you sent back the copy of the plaintiff's

(Testimony of John Chinn.)

Exhibit 4 to the purchaser you never at any time sent back a copy of Form FV 111, did you?

A. No.

Q. You did not discuss with a single purchaser the specific—any specific provision in Form FV 111—

Mr. Erickson: I object on the ground of repetition. It's been asked twice.

Q. No, your Honor, I'm going to finish the question—pertaining to a clause by which title did not pass, did you? A. Yes, I did.

Q. The specific provision?

A. I couldn't point out exactly who it was, but I know a number of cases where that was read to different growers, farmers, but I couldn't tell you who they were.

Q. You know it was read to two or three, or some very small number, isn't that correct?

A. I personally took care of a few of them. I don't know how many.

Q. A very small percentage out of the total number, wasn't it?

A. As far as I'm concerned, yes, but I didn't write all the contracts.

Q. You're in charge of the office? [29]

A. I'm in charge of the office.

Q. The office is a rather open expanse, a counter about twenty feet long in a straight line with complete access of any man behind the counter up and down? A. Right.

Mr. Robinson: Your Honor, I can put on other testimony to the fact that the form was no part of

(Testimony of John Chinn.)

the contract, was never shown or given to the man, became no——

The Court: We're just concerned now with its admissibility on the evidence so far presented, aren't we?

Mr. Robinson: That's right. Object to the introduction on the ground it was no true part of the contract. If it were private individuals it would certainly be susceptible to fraud, with reference to the provisions in the form. I don't know whether your Honor has seen the form or not. It doesn't have any connection with the order form. The order form is the purchase contract. It states in the announcement that the potatoes would be—the contract would be completed when they passed to the purchaser, when he takes delivery of them, rather.

The Court: If I want more argument I'll mention it.

Mr. Robinson: Oh.

The Court: I'll ask the jury to step out for just a few minutes, please.

(Whereupon, the following proceedings were had without the [30] presence of the jury.)

The Court: I thought we'd better discuss and pass upon this point in the absence of the jury, because from hastily glancing over this contract or order form, which I have seen for the first time today, I can find no provision in there as to reservation of title, and I assume that the reservation of title is rather an important element in this case.

Mr. Erickson: Yes, it is.

(Testimony of John Chinn.)

The Court: And for that you're depending upon your identification 5?

Mr. Erickson: Yes.

The Court: Are you offering that on the theory that it's a part of the contract, or that it's a regulation that has the force of law?

Mr. Erickson: Both, that it's a part of the contract, and a regulation that has the force of law.

Mr. Robinson: Your Honor, there's no authority on the part of the Commodity Credit Corporation to make regulations such as there was in the O.P.A. and other war activities. The statute, I have the laws of the 80th Congress, sets this up on an entirely different basis, as might be understood from our friends in the 80th Congress. With reference to the Commodity Credit Corporation the whole theory was an intent, apparently, on the part of the [31] 80th Congress when it passed the Commodity Credit Corporation Act to drastically limit some of these broad administrative regulations and authority that had been given. As a result, the Commodity Credit Corporation charter act as approved June 29, apparently just before the end of it, has no provision for any administrative regulations of any kind whatsoever except for the operation of the corporation itself, the board of directors and the executive staff. We therefore would strongly press that there was no valid basis whatsoever for any contention. nor any shown here, that that is issued pursuant to any administrative authority or regulation. Now, on the other point——

The Court: It would seem to me, of course I'm

(Testimony of John Chinn.)

just expressing a tentative view here, but it would seem to me that to be a part of the contract and to be embraced within the agreement of the farmer who was purchasing the potatoes for feed purposes and the corporation, it would have to either be attached or be read by him, or be called to his attention, and that hasn't been shown, it doesn't seem to me that under the proof so far you could say that something merely laid out on the desk, that he could have read if he had seen fit, is a part of the contract he signs. I don't see how that could be possible, so on that I'll hear from the United States Attorney further. If this is a regulation [32] on which the court could take judicial notice, it would have some effect here.

Mr. Robinson: We don't contend there isn't a warranty; it's the reservation of the title clause only.

The Court: Yes, I understood that, but this plaintiff's identification 4, as I understand it, contains no reservation of title.

Mr. Robinson: No, it does not.

The Court: If we had exhibit 4 here alone to deal with, it would seem to me the title would pass to the purchaser upon payment and delivery.

Mr. Erickson: May it please the court, paragraph 2 from Exhibit 4, "Potatoes for livestock feed will be sold subject to the terms and conditions set forth in form FV 111, and at the following prices".

The Court: Oh, yes.

Mr. Erickson: That's signed by Williamson; he read that. Then down below, in the paragraph immediately above his signature, it says, "I/we have read the terms and conditions of this sale as set



(Testimony of John Chinn.)

forth herein and in Form 111, terms and conditions of sale of fresh Irish potatoes for livestock feed, and agree fully to abide by such terms and conditions." He states he has read it; Mr. Chinn says they're available on the desk, but he just doesn't read it to each and every person who comes in to the counter there, [33] and I want to submit that although this document is not complete in itself, it incorporates by reference another document which the signer of that document states he has read, and signs over his signature that he's read it and knows the provisions, and I submit that it then becomes a part of the contract.

Mr. Robinson: Your Honor, in the first place, the statement that potatoes will be sold subject to terms and conditions is a part of an announcement or advertisement in the Form FV 911, of the announcement form; that has no part of the contract whatsoever. The statement with reference to "I have read the terms and conditions of this sale" that is the reason I went into what would otherwise be proper on cross-examination with reference to Mr. Chinn, in which Mr. Chinn pointed out that of the great many, hundreds if not thousands of persons with whom he dealt, that the part of Form FV 111, this matter, which is the only thing upon which the government can hang its hat, for title, was not set out to them, a copy of the contract was sent back to these people eventually, in the case of Williamson you can see it was a month later, or more, but there was absolutely nothing sent back to them or anything explained to them with reference to title. No doubt

(Testimony of John Chinn.)

it was explained to them that they had to be livestock feeders; we raise no question about a warranty or [34] agreement that it be used for livestock feed. There is nothing tying these two papers together, in a normal case, if they had attached this together, and the grower said, "I have read this, set forth herein, copy attached," but here is a deliberate, unfortunate, because of the case Mr. Chinn was very rushed, he had potatoes up to his ears, there was simply nothing done; on the other hand, a denial of the very processes here, that he says he has read the terms and conditions, so that the grower did not know; he knew that he warranted the potatoes would be used, but he had no way to know this reservation of title hidden in another paper, of which the first paragraph is entitled "terms and conditions" and a lot of fine print there on a mimeographed form, and I contend it is not admissible for that reason.

The Court: I think that's an argument that you might use as to the weight to be given to this document, and in case there's a conflict, you could argue the conflict, but here, when Mr. Williamson certifies over his signature that he's read this document, FV 111, I think that's prime facie evidence that he has read it, and it's enough to make the document admissible in evidence. I'll overrule the objection, allow the defendant an exception, and admit identification 5.

Mr. Robinson: Your Honor doesn't want to hear Mr. [35] Williamson on that point?

The Court: No, I think the government has shown enough to show it's admissible, and if there's a con-



(Testimony of John Chinn.)

flict in the testimony as to its effect, or whether he had notice, or how much notice he had of it, that's for the jury to determine.

(Whereupon, Plaintiff's Exhibit No. 5 for identification was admitted in evidence.)

[Printer's Note: Plaintiff's Exhibit No. 5 is set out in full at page 310 of this printed Record.]

The Court: I don't think we have a different situation than if proof is offered that A signs a document; that makes a document admissible. I'm not going to stop and have A testify he didn't sign it, and have handwriting experts and go through the whole business of whether it's a genuine signature. It's admissible, and then it's a matter of weight of evidence.

Mr. Robinson: I meant it was a studied procedure on the part of the government; there wasn't any activity taken in regard to it; if it would otherwise appear in the evidence, we could show that the grower didn't see it, that's the reason I meant I thought it wasn't admissible.

The Court: Well, I think the witness testified he discussed the clause with several growers; he doesn't know whether the growers read it or not; he said it was there and it was out before them; he can't say they did or didn't; I think you might infer that most of them didn't, [36] but I think in view of the fact there's a certification here, that would make it admissible. Bring in the jury.

(Whereupon, the following proceedings were had within the presence of the jury.)

(Testimony of John Chinn.)

(Whereupon, Mr. Erickson read plaintiff's Exhibit 4 and the first two paragraphs of plaintiff's Exhibit 5 to the jury.)

(Whereupon, certificate of inspection was marked Plaintiff's Exhibit No. 6 for identification.)

(Whereupon, voucher was marked Plaintiff's Exhibit No. 7 for identification.)

Direct Examination—(Continued)

By Mr. Erickson:

Q. Mr. Chinn, I'll hand you plaintiff's identification 6 and ask you to state what that is.

A. This is a certificate of inspection, giving the grades and disposition of lot.

Q. Is that certificate a part of the records and files of your office?      A. It is.

Q. And what is the procedure in obtaining an inspection certificate?

A. After obtaining the inspection certificate a voucher is made from the inspection certificate to pay the man for whose potatoes we buy. [37]

Q. And is the license number of the truck mentioned on the certificate?      A. It is.

Q. On which the potatoes are loaded. I'll hand you plaintiff's identification 7 and ask you what that is, Mr. Chinn.

A. This is a public voucher made out to H. H. Simmons and Sons for fresh Irish potatoes.

Q. Are those for the same potatoes mentioned in plaintiff's identification 6, or not?      A. Yes.

(Testimony of John Chinn.)

Q. This voucher, plaintiff's 7, is made payable to H. H. Simmons and Sons? A. Yes.

Mr. Erickson: I'll offer 6 and 7 together.

(Whereupon, certificate of inspection was marked Plaintiff's Exhibit No. 8 for identification.)

(Whereupon, voucher was marked Plaintiff's Exhibit No. 9 for identification.)

### Voir Dire Examination

By Mr. Robinson:

Q. Mr. Chinn, the procedure in making out the voucher was, after you received the inspection certificate from the Horticulture Inspector the voucher was made out? A. Yes, sir. [38]

Q. Your office made the voucher out?

A. Yes.

Q. You had nothing to do with making the inspection certificate? A. That's right.

Q. You just received that from the horticultural inspector, is that right? A. That's right.

Q. You don't have any personal knowledge about the inspection certificate, do you? A. No.

### Further Direct Examination

By Mr. Erickson:

Q. Let me ask one more question: Are they part of the official files of your office? A. They are.

Q. And under your custody.

Mr. Robinson: There's an error in one of them; I want to bring it out later on, I think.

The Court: All right.

(Testimony of John Chinn.)

Mr. Robinson: It's not intentional on anyone's part; no objection.

The Court: Admitted.

(Whereupon, Plaintiff's Exhibits Nos. 6 and 7 for identification were admitted in evidence.)

[Printer's Note: Plaintiff's Exhibit No. 6 is set out in full at page 314 of this printed Record.]

[Printer's Note: Plaintiff's Exhibit No. 7 is set out in full at page 316 of this printed Record.]

Q. (By Mr. Erickson): Now, referring you to plaintiff's Exhibits [39] 6 and 7, you may have them to refresh your recollection, what do they indicate about the purchase and payment of potatoes from C. F. Williamson, if anything?

A. It shows that we purchased 445 100-pound sacks of U. S. No. 1 potatoes, and that the vouchers was made out to H. H. Simmons and Sons, who is an elibigle dealer. We don't know whose potatoes they were.

Q. Does it show where the potatoes came from, the inspection certificate?

A. It shows where they're to go to.

Q. Where they're to be delivered to?

A. That's right.

Mr. Robinson: We'll stipulate that they came from Williamson, rather than worry about it. It doesn't show on there where the potatoes came from that are paid there, but we know that many sacks came in.

Mr. Erickson: Very well.

(Testimony of John Chinn.)

The Court: All right.

Q. (By Mr. Erickson): And I'll hand you plaintiff's exhibit for identification number 8, and ask you to state what that is?

A. It's an inspection certificate for 200 sacks of U. S. No. 1, and 59 sacks of U. S. No. 2.

Q. And is that part of the official records——

A. No, that's all No. 1, I guess. The 59 was in used sacks.

Q. Is that part of the official records and files of your [40] office?           A. That is.

Q. Signed by one of your inspectors?

A. Signed by one of the inspectors.

Q. I'll hand you plaintiff's identification 9, and ask you to state what that is?

A. This is the voucher showing that we paid for 200 sacks of U. S. No. 1 and 59 sacks of U. S. No. 2, Pasco Growers.

Q. Does plaintiff's 9 show payment for the same potatoes mentioned in identification 8?

A. Yes.

Mr. Erickson: I offer 8 and 9.

Mr. Robinson: No objection.

The Court: They will be admitted.

(Whereupon, Plaintiff's Exhibits Nos. 8 and 9 for identification were admitted in evidence.)

[Printer's Note: Plaintiff's Exhibit No. 8 is set out in full at page 318 of this printed Record.]

[Printer's Note: Plaintiff's Exhibit No. 9 is set out in full at page 320 of this printed Record.]

(Testimony of John Chinn.)

(Whereupon, consignee receipt for 445 sacks potatoes was marked Plaintiff's Exhibit No. 10 for identification.)

(Whereupon, consignee receipt for 200 sacks potatoes was marked Plaintiff's Exhibit No. 11 for identification.)

Q. (By Mr. Erickson): I'll hand you plaintiff's identification 10 and ask you to state what that is, Mr. Chinn?

A. This is the consignee receipt signed by C. F. Williamson for 445 sacks of U. S. No. 1 potatoes.

Q. I'll offer 10; and I'll hand you plaintiff's identification 11 and ask you to state what that is?

A. This is also a consignee receipt showing 200 100-pound sacks of fresh Irish potatoes received by C. F. Williamson.

Q. And it gives the date of the receipt?

A. The date isn't on there.

Q. Are these 10 and 11 part of the official records and files of the Department of Agriculture here?

A. They are.

Q. And in your custody here in Yakima?

A. They are.

Mr. Erickson: I offer 10 and 11.

Mr. Robinson: No objection.

The Court: All right, they will be admitted.

(Whereupon, Plaintiff's Exhibits Nos. 10 and 11 for identification were admitted in evidence.)



(Testimony of John Chinn.)

[Printer's Note: Plaintiff's Exhibit No. 10 is set out in full at page 323 of this printed Record.]

[Printer's Note: Plaintiff's Exhibit No. 11 is set out in full at page 324 of this printed Record.]

Q. Now, I'll hand you exhibit 10 and plaintiff's exhibit 7 and ask you to state whether or not those are the same potatoes, the 445 sacks?

A. Yes, they are.

Q. So that the plaintiff's exhibit 7 is the purchase voucher for the potatoes mentioned in plaintiff's Exhibit 10 which Mr. Williamson acknowledges receipt for, is that correct?      A. Right.

Q. I'll refer you to Plaintiff's Exhibit 11 and Plaintiff's [42] Exhibit 6, and ask you if those are the same potatoes—let's see what one that is. I hand you Plaintiff's Exhibit 9, and ask you if those are the same potatoes covered by Plaintiff's Exhibit 11?

A. Yes, they are.

Q. And 9 is a purchase voucher for potatoes covered in 11?      A. Yes.

(Whereupon, contract for livestock feed, Waller, was marked Plaintiff's Exhibit No. 12 for identification.)

(Whereupon, terms and conditions of sale was marked Plaintiff's Exhibit No. 13 for identification.)

Q. I'll hand you Plaintiff's Exhibit 12 for identification, and ask you what that is?

A. It's a contract for livestock feed.

Q. Signed by whom?



(Testimony of John Chinn.)

A. Signed by Melvin E. Waller.

Q. I'll hand you plaintiff's identification 13, and ask you to state what that is?

A. It's the terms and conditions of sale of Irish potatoes for cattle feed.

Q. Do you have any independent recollection of the signing of this contract? A. No, I don't.

Q. Is this contract part of the records and files of your [43] office? A. It is.

Q. And under your custody at this time.

The Court: Who is that contract between?

Mr. Erickson: Melvin Waller, and the United States Department of Agriculture, dated August 25, 1948.

The Court: All right.

Mr. Erickson: I offer 12 and 13.

Mr. Robinson: Your Honor, these are—I object to them as entirely irrelevant. The dates shown are August 25; it's a purchase form, the same one Mr. Williamson signed, and I think it's Exhibit 4, the purchase dates are August 25 and September 23, 1948, indicating, I think, rather clearly—

The Court: Subsequent to the date of the indictment?

Mr. Robinson: Yes, two days after for one of them, and a month after for the other, and the guilty knowledge must have been shown, if they can show it at all, certainly at the time that any taking was involved, and by their own statement the potatoes were in Portland before this ever occurred.

Mr. Erickson: I will withdraw the offer for these two now. I think it can be tied in later.

(Testimony of John Chinn.)

The Court: All right; you can withdraw the offer and leave them in identification here. [44]

Mr. Erickson: Yes. That's all; you may examine.

**Cross-Examination**

By Mr. Robinson:

Q. Mr. Chinn, you haven't brought over all the records from your office, have you?

A. Pardon?

Q. You haven't brought over all the records from your office? A. No.

Q. You have a lot more records over there, isn't that correct? A. Yes.

Q. Do you have other records of deliveries of potatoes made to Charley Williamson, potatoes that he had bought from the government?

A. I have.

Q. You have quite a few with regard to this same period of time, haven't you? A. Yes.

Q. How many potatoes did Mr. Williamson contract to purchase from the government and buy from the government for stock feed?

A. Through the entire year?

Q. 1948. A. I couldn't tell you exactly.

Q. Can you tell me from Plaintiff's Exhibit 4 how many he bought on August 19, 1948?

A. No, I can't. [45]

Q. Why not?

A. Well, he didn't buy them all one day; I don't know what day he did, but they're delivered through a period of time.

Q. Can you tell me how many he contracted to purchase on August 19, 1948?

(Testimony of John Chinn.)

A. Whatever is on that contract, 11,000 hundred-weight.

Q. How many ton?

A. That would be 22, I guess.

Q. It would be 500 ton, wouldn't it, 550 ton?

A. Yes.

Q. 550 ton is the number that Mr. Williamson contracted to purchase for stock, is that right?

A. Yes.

Q. Far as you know he paid for that number, didn't he?

A. Yes.

Q. You gave him authorization to take delivery of that number, did you not?

A. I did.

Q. So far as you know, why, he took delivery of that number, isn't that correct?

A. I have records to show how many he took and how many he didn't; sometimes those contracts were under delivery and sometimes——

Q. Sometimes they were over-delivered?

A. Yes. [46]

Q. If they were over-delivered you went around and tried to collect from the purchaser, isn't that right?

A. That's right.

Q. You have in your office, then, a considerable number of records of other deliveries that Mr. Williamson had made and purchased, didn't you?

A. That's right.

Q. You have records of other deliveries of potatoes purchased at about August 23, 24, 25, and around that period, haven't you?

A. Yes, sir.

Q. Exhibits 6 to 12, then, don't purport to be all of your records pertaining to purchases at about that time, do they?

A. No.

(Testimony of John Chinn.)

Q. I think you said that was a very busy time for your office and for the horticultural folks also, wasn't it?      A. It was.

Q. You were both very much rushed; after potatoes were delivered at a sorting house as far away as Sunnyvale, it would take several days for you to get the horticultural inspection certificates such as inspection certificate number 6, wouldn't it?

A. It usually took about two to three days.

Q. Two or three days until you got the inspection certificate; [47] then I presume it's correct, isn't it, that you put it through a processing in your office, isn't that correct?      A. Yes.

Q. At the same time you had the inspection certificate did you always get consignee's receipt. Exhibit 11?

A. The consignee's receipt must accompany the voucher and the inspection certificate before payment could be made.

Q. Did it have to accompany the inspection certificate at the time that you got it?      A. No.

Q. But it had to be in your office until payment was made, is that correct?

A. Consignee vouchers were held up until a consignee's receipt was signed.

Q. You didn't issue any voucher until you had the inspection certificate and the receipt showing he had not only paid for the potatoes, but had received them. Did you use this same procedure when a stock feeder who wasn't a producer of potatoes came in?

A. Yes.

Q. You didn't issue him any voucher, did you?

A. Of course not.

(Testimony of John Chinn.)

Q. You didn't use the voucher form as far as the stock feeder was concerned?

A. The voucher is to pay the eligible dealer. [48]

Q. It had no connection with the people who were purchasing potatoes at all, did it?

A. The voucher?

Q. Yes.           A. No.

Q. I think you said you have no personal knowledge about the execution of the consignee's receipt, the inspection certificate, or the voucher, isn't that right?

A. That's right.

Q. The voucher was the only thing made up in your office?

A. That's right, and the consignee's receipt.

Q. The consignee's receipt was made up in your office?

A. It's taken off the voucher, and it shows the disposition of those potatoes.

Q. Were similar consignee's receipts to plaintiff's exhibit 11 made up in your office?

A. Yes.

Q. That is, the information that's on them was filled in?

A. It's all filled in.

Q. In your office?           A. Yes.

Q. After you received the inspection certificate?

A. It's taken from the inspection certificate.

Q. From the inspection certificate; then it was always several days from the time that potatoes were delivered to a purchaser [49] before he ever signed a receipt for them, isn't that correct?

A. In some cases.



(Testimony of John Chinn.)

Q. Well, in the cases of deliveries at Sunnyside to purchasers for livestock feeding it was always several days from the time the deliveries were made before the consignee's receipt was ever signed, isn't that correct?

A. I wouldn't want to say how many days.

Q. But it was always several days?

A. No, I don't think it was.

Q. It was always enough time for the horticulture inspection certificate to come to your office and for you to prepare the consignee's receipt and to get it signed, wasn't it?

A. No.

Q. Why not?

A. In some cases they signed consignee receipts before the potatoes were delivered, in order to receive their money.

Q. They signed the consignee's receipts in blank very often, didn't they?

A. In some cases.

Q. That's the way Mr. Williamson signed his, wasn't it?

A. I don't know.

Q. Wasn't that the customary procedure, so there wouldn't be this delay we're referring to?

A. No, it wasn't the customary procedure, but some cases it [50] was done that way.

Q. No objection by the government, was there?

A. Not that I know of.

Q. Or by you. How long have you been working with this subsidy program for potatoes, Mr. Chinn?

A. This is the first year.

Q. Last year was the first year. The essence of

(Testimony of John Chinn.)

the program was that you purchased for the Commodity Credit Corporation, purchase the potatoes from persons under the potato subsidy program, isn't that right?      A. That's right.

Q. That was the essence of it, and then, having a lot of potatoes on hand, you disposed of them to certain processors and for livestock feeding?

A. That's right.

Q. There was no necessary connection between the two, the purchase by the government and the sale out to livestock feeders and processors, was there?

A. I had my orders on disposition each day, as to where these potatoes should go.

Q. Answer the question, Mr. Chinn. Would you read it?

(Whereupon, the reporter read the last previous question.)

The Court: I'm not sure that's clear. It isn't too clear to me whether you mean a specific instance, or the [51] whole program.

Q. Yes; I mean the part of the—that you didn't have to—that your sale transaction for processing and livestock didn't have any exact or close connection with your purchase of the potatoes from the growers who were under the subsidy program?

A. We had to have a disposition of those potatoes.

Q. Had to get rid of them when you got them in; that's right.      A. That's right.



(Testimony of John Chinn.)

Q. If a grower sold potatoes to the government, and a livestock feeder who didn't raise potatoes came in, you'd sell them to him, isn't that the way you worked it out?

A. Yes, whenever we had certain contracts filled.

Q. Wasn't it, as a part of this program, weren't orders given down from your higher channels to dye potatoes that were sold for livestock feed, dye them a different color?      A. Yes.

Q. You didn't see that any of those orders were carried out, did you?

Mr. Erickson: Now, to which we object as outside of the scope of direct examination.

The Court: I'll overrule the objection.

A. Yes, we dyed some potatoes.

Q. When?      A. This past summer. [52]

Q. At the beginning of the program, or at the end of it?      A. Towards the end of it.

Q. Not before September 1, did you?

A. I think not.

Q. You didn't even have any dye, did you?

A. Yes, we did.

Q. Before that time?

A. I don't know if we had the dye; we had everything else; I think we had the dye; it came in, but I don't know what date.

Q. You don't know that any of the potatoes that Williamson purchased during the month of August for livestock feed were ever dyed, do you?

A. They were not dyed.

(Testimony of John Chinn.)

Q. They were not; that's all.

The Court: Any redirect?

### Redirect Examination

By Mr. Erickson:

Q. Mr. Chinn, in regard to that last question, you say that the potatoes purchased by Mr. Williamson were not dyed, but state whether or not Williamson purchased any potatoes for any other purpose than livestock feed?

A. I think all the potatoes that Mr. Williamson bought were for livestock feed.

Q. They all went for livestock feed; where did you get your orders for the disposition of potatoes? [53]

A. Through the inspection service.

Q. The which? A. Inspection service.

Q. Did you get those orders daily?

A. Yes.

Q. And when you got the orders what did you do with the orders that you got?

A. The inspection service notified us by 'phone every night as to how many potatoes were being loaded by certain warehouses, if you're talking about eligible dealers, and we notified Commodity Credit each night of how many potatoes we bought, as well as the State office.

Q. State whether or not you in turn transmitted orders to the eligible warehouses as to what to do with the potatoes? A. That's right.

Mr. Erickson: That's all.

(Testimony of John Chinn.)

Recross-Examination

By Mr. Robinson:

Q. These eligible dealers and warehouses, were they the agents of the Commodity Credit Corporation to handle these potatoes you bought?

A. They made a contract with Commodity Credit to handle eligible growers.

Q. They were paid a certain fee by the government according to a certain schedule for all the actions they handled, of sorting and so on? [54]

A. That's right, they acted as an agent of the government in handling these cases.

Q. How do you know that Mr. Williamson didn't purchase any except for livestock feed?

A. He didn't purchase any from us for livestock feed—outside of for——

Q. Excuse me?

A. He didn't buy any government potatoes for anything but livestock feed.

Q. You didn't restrict the hauling away by a grower of culls or lower grade potatoes that he put through one of these eligible dealers, did you?

A. No.

Q. In other words, they belonged to the grower, and you never bought them and never sold them back.

A. They were never reported to us.

Q. That was a transaction between the dealer and the grower who took them in?

A. I suppose so.

Q. He hauled them away as he saw fit. That's all.

Mr. Erickson: That's all.

(Whereupon, there being no further questions, the witness was excused.) [55]

JOHN B. KERBY,

called as a witness on behalf of the plaintiff, having been duly sworn, testified as follows:

Direct Examination

By Mr. Erickson:

Q. Will you state your name, please?

A. John Blue Kerby.

Q. And what is your present occupation?

A. I'm a school teacher.

Q. At Toppenish? A. Yes, sir.

Q. During the last summer season what was your occupation then?

A. I was employed by the state horticultural department in the position of inspecting potatoes.

Q. And that was during August of 1948?

A. July and August was the time I was employed, sir.

Q. Well, Mr. Kerby, I'll hand you plaintiff's exhibit 8, and ask you to state whether or not that's your signature appearing on there?

A. Yes, that is my signature.

Q. And did you make that inspection certificate?

A. Yes, I made the inspection of the potatoes as they were sorted and loaded onto the truck.

(Testimony of John B. Kerby.)

Q. And what day was that inspection made?

A. Well, it was August 24, 1948.

Q. And just tell how you made this inspection and what your [56] duties were.

A. Well, that is the time I was working at Majonnier's.

Q. That's the same as Pasco Growers?

A. Yes; on commercial brands, on potatoes being sold under commercial set-up without support, they went out as Majonnier's, and on support potatoes they went out as Pasco Growers.

Q. What did you do?

A. At the warehouses the potatoes were run over the belts for inspection by the employees there. My duties were to extract at least one sack out of every thirty-five or fifty and inspect them as to quality and grade, and whether they met the specifications of the government, and after the potatoes were sacked and stacked in a given area on the floor of the warehouse I made a note of the number and where they were, and those that were under this program had to be counted onto the truck and the amount of the load certified, and also the license number of the truck on which the potatoes were loaded.

Q. Refreshing your recollection from that certificate, how many did you count out, the number stated?

A. Well, I believe it to be so, or I would not have stated it.

(Testimony of John B. Kerby.)

Q. Well, what truck were these potatoes placed on?

A. Well, there were two truck, the license numbers of which I certified, TKE7015 and TKE10173.

Q. How many were placed on each truck?

A. One truck 201, and the other 208 and 51 sacks; the 208 truck was a large flat bed, I believe it was either a very large flat bed, or a truck tractor with a flat bed trailer and the other was a small load on a small older truck; I don't know which license number fit which truck, but I do know there were two different ones.

Q. And were these number 1 potatoes?

A. I believe they were all number 1 potatoes, yes.

Q. And state whether or not they were stock food potatoes?

Mr. Robinson: I object to that as calling for a conclusion of the witness.

The Court: Well, I think he's answered the question that they were number 1.

A. Yes, I certified them and inspected them sufficient to know they were all number 1 potatoes.

The Court: Sustain the objection.

Q. And these potatoes were loaded into the truck for what purpose, if you know?

A. On the certification that was being carried on at the time under this program to stock feeders, and when I certified the loading of the trucks and it was on the trucks I had to find out from the driver where they were being sent and for what



(Testimony of John B. Kerby.)

purpose. The truck driver stated the loads were being delivered to C. F. Williamson, Sunnyside, Washington, [58] at his feed lot.

Mr. Erickson: That's all; you may examine.

Cross-Examination

By Mr. Robinson:

Q. Let me see the exhibit; I didn't hear everything that was said. With reference to plaintiff's exhibit 8, it shows two truck loads, is that correct?

A. Yes, sir.

Q. That is 200 sacks on one truck, and 59 on the other?

A. 208 on one truck, I believe, and 51 on the other.

Q. Well, I don't mean to trap you; showing you the exhibit, 200 on one and 59 on the other, is that right?

A. Yes, apparently there is that, 208 and 51 are 259; now, why there should be a slight discrepancy there, unless there was an error in my part, I know the total number counted out on the floor and the total number on the two trucks; as to the split, I apparently did make an error in splitting the size of the loads.

Q. Under the word "Products" you split them 200 on one truck and 59 on the other, and the other 208 on one truck and 51 on the other?

A. Oh, yes, I see, I thought you were pointing out a discrepancy there; there's 200 used number 1 100-pound sacks, marked Blue Mountain, and 59 number 2; however, on the one truck there were

(Testimony of John B. Kerby.)

apparently 208 sacks, 200 sacks of number 1 and 8 sacks number 2. [59]

Q. What the trucks had on them were 208 on one and 51 on the other?

A. Yes; however, there was the 20 Number 1's.

Q. Do you have any personal recollection of this transaction?

A. In thinking back over it, I do, in the sense that there was a number of trucks being loaded out at the time I was inspecting the loading of railroad cars, and it meant oftentimes I had to work all during my lunch hour, when I was supposed to have lunch, to keep up with everything which I did this day, and that's the only reason I mentioned it.

Q. This shows the loading 12:30 p.m.; is that the time it was completed? A. Yes.

Q. I assume you had your lunch after this time?

A. Yes.

Q. Did you do the typing?

A. No, I sent them out on the form you see them, in longhand, and they're typed in the office, and I re-check them and certify it to be a fact.

Q. You didn't keep any copy of the memo you sent in to the office, did you?

A. No, but I believe the office itself checked the final form with the original longhand.

Q. Where is the office that you refer to? [60]

A. The office would be at Grandview, I believe.

Q. Did you send these in at the close of the day?

(Testimony of John B. Kerby.)

A. Well, yes, they usually went in in the afternoon and they were brought back the next morning for signing and forwarding to the various places that the duplicate copies would be sent.

Q. You handled approximately how many trucks on the usual day?

A. One day there was a large number of trucks going to one shipment in Toppenish, and it took all the potatoes that they were running at the warehouse at that time, to some man in Toppenish, and there must have been a dozen trucks that day. However, on the average day we were running the large percentage into the freight cars, and then there would be only two or four trucks at the most.

Q. John ran most of his onto trucks?

A. Well, it depends on the grower. Some were going out on the iced cars to the Eastern market.

Q. Those were non-support potatoes?

A. Probably, at that time. The rest were shipped to some processing plant for processing under the support program.

Q. How many days did you work last summer on this, Mr. Kerby?

A. From the first of July until the last day of August, or rather the 28th or 29th, just a day or so before school started. [61]

Q. Did you work all your time at Majonnier's?

A. No. When I first started I spent two weeks here in Yakima training in the policy and the rules and regulations of inspecting potatoes.

(Testimony of John B. Kerby.)

Q. How much time did you spend at Majonnier's around the period of August 24?

A. At least a month.

Q. In other words, practically the whole month of August?

A. Practically the whole month; I believe it was the first few days of August or the latter part of the first week when I went down there.

Q. Did you spend any time at any other sorting house?

A. Well, the first week was spent with another fellow re-inspecting some potatoes.

Q. Did you after August 15 spend any time in any other sorting house besides Majonnier's, or Pasco Growers?

A. Yes. There was one other house I went over to check a few potatoes in a car across the tracks from where I was working with Majonnier's.

Q. Do you recall when that was?

A. I couldn't recall the day or the time; I know I inspected them for just a matter of a few sacks before they sealed them overnight, and that was a matter of assisting out on a rush program.

Q. What do U. S. No. 1 potatoes look like? [62]

A. Well, a U. S. No. 1, depending on the type one is inspecting, those are the White Rose, six ounces or larger, smooth, even surfaced, conformity to type, and free of blemishes within certain limitations.

Q. They're pretty fine looking potatoes, aren't they?

A. They should be.

(Testimony of John B. Kerby.)

Q. A minimum of  $1\frac{7}{8}$  inches in diameter, is that correct?      A. On these they ran that, yes.

Q. You have no personal knowledge of the trucks that were doing this hauling?

A. Only as I looked them over, I had to check each one for its license number and make sure that the license number that I wrote down was the one on the trucks and trailers, and find out where they went, is the only personal contact I had with the truck.

Q. Is one of the trucks referred to on government's exhibit 8 a small truck?

A. I think it was rather dilapidated, there was just a bed fastened on the back, rather ancient vintage, but I suppose it would be two, two and a half tons.

Q. A farm truck?

A. Yes, local small truck.

Q. The other a farm truck also?

A. No, the other was a large truck you see on the highways, long distance hauling, what I'd think about it. [63]

Q. Was it a truck, or a trailer?

A. I believe it was a truck and semi-trailer.

Q. Not quite sure about that?

A. I know it was a large flat bed, and I would say it was a truck and semi-trailer.

Q. You always were careful to put the numbers of the license down?

A. Yes; now, a few trucks that came in were minus a license on the truck or trailer, and occa-

(Testimony of John B. Kerby.)

sionally there was a question about that, and if they couldn't find the one, I'd get the license off the tractor part or trailer part, whichever was there; apparently the state wasn't too careful in checking the trucks that the licenses were present.

Q. You don't know the name of the owner of the farm truck?           A. No, not that one.

Q. That wasn't any part of your concern?

A. No, not who owned it or who was driving it; mainly who the potatoes were being delivered to.

Q. Do you know the name of the owner of the other truck?

A. I believe it was the Herrett Trucking firm.

Q. You cleared a number of shipments hauled out by the Herrett Trucking Company for Williamson, did you not?

A. I believe I did, yes.

Q. You can't be positive that on August 24 a truck involved there was the Herrett Trucking Company, out of all those [64] shipments, can you?

A. Well, yes, I could say it was.

Mr. Robinson: That's all.

Mr. Erickson: That's all.

(Whereupon, there being no further questions, the witness was excused.)

(Short recess.)

(All parties present as before, and the trial was resumed.)



JOHN CATLIN,

called as a witness on behalf of the plaintiff, having been duly sworn, testified as follows:

Direct Examination

By Mr. Erickson:

Q. Will you state your name, please?

A. John Catlin.

Q. And your residence?

A. Ellensburg, Washington.

Q. What is your employment?

A. Department of Agriculture, Horticultural Inspector.

Q. During the month of August, 1948, where were you stationed then?

A. Sunnyside, Washington.

Q. I'll hand you plaintiff's exhibit No. 6 and ask you if that's your signature that appears on the bottom of that certificate?

A. That's right. [65]

Q. Will you tell us how you made that certificate?

A. I don't quite get what you mean.

Q. How was the information on that certificate compiled by you?

A. Well, when this truck came up to Simmons' warehouse he parked in front of the warehouse, and when they started loading I started my inspection, when my inspection started, that's the time of day showing on this certificate here, at the time the truck was started to load, and the

(Testimony of John Catlin.)

inspection continued until the truck was completely loaded and counted and departed.

Q. And what did your inspection consist of?

A. The grade of potatoes, the trucking company, the truck license, and who the applicant was, the shipper, the warehouse where I was working, and the destination of the potatoes.

Q. And what did you ascertain the destination of those potatoes to be?

A. Well, the applicant stated they was to be delivered to C. F. Williamson.

Q. Where?

A. Sunnyside, Washington.

Q. At what particular place?

A. No place other than the feed lot; there was no other designation there. [66]

Q. And how many sacks is covered by that report?      A. 445.

Q. How many trucks involved?

A. Two trucks.

Q. What kind of trucks were they?

A. One was a semi-trailer flat bed, pulled by Herrett Trucking Company, and the other was a solo farm truck.

Q. Do you have the license numbers of the flat bed or semi?

A. TLE 1190, and the farm truck was TKE 10170.

Q. And how many sacks?

A. 315 on the flat bed, and 130 on the solo.

Q. Were both trucks destined for the C. F.

(Testimony of John Catlin.)

Williamson feed lot?           A. Yes.

Q. What grade of potatoes were on those trucks?

A. U. S. No. 1.

Q. And what warehouse did they come from?

A. They came from H. H. Simmons & Sons warehouse.

Q. And what kind of sacks were they in?

A. They were in Paramount brand used sacks; Simmons sacks.

Q. And what was the date?

A. That was August 23, 1948.

Q. Does it give the time?

A. Started at 8:45 a.m., completed at 6 p.m.

Mr. Erickson: That's all; you may examine. [67]

### Cross-Examination

By Mr. Robinson:

Q. The 6 p.m. to which you now refer was the time when both trucks were finished loading?

A. Yes, I believe that's right.

Q. The time that appeared on these inspection certificates was the closing time that your connection with the truck load shown on here was terminated?           A. Yes.

Q. Do you have any independent recollection about the trucks separately loading, which one loaded first?

A. The flat bed loaded first.

Q. That's the one with the 315 sacks?

A. Yes.

Q. 315 sacks the way they were loaded out there is how many tons?

(Testimony of John Catlin.)

A. Fifteen and three-quarters.

Q. Fifteen and three-quarters ton of potatoes was put on the flat bed truck?

A. That's right.

Q. How high were they stacked, do you remember?

A. I believe they were four or five high, but I wouldn't be positive of that; I don't recall.

Q. When you say a flat bed truck you mean one on which there were no side boards?

A. That's right. [68]

Q. Or supports at all? A. That's right.

Q. A tarpaulin and ropes were used to keep them from falling off on the sides, weren't they?

A. On this case, yes.

Q. Yes, on the flat bed truck? A. Yes.

Q. Do you remember when the flat bed truck moved away from the Simmons warehouse?

A. Not exactly, no; somewhere around between 4 and 5, but I couldn't say for sure when.

Q. And then the farm truck was loaded later on? A. That's right.

Q. Was it left standing at the Simmons warehouse until a later time in the evening, do you recall?

A. It must have been completed by 6 o'clock, because that's the time the inspection on the certificate was completed, and we don't complete the certificate until the truck is fully loaded and counted.

Q. Yes, but you do complete the certificate be-

(Testimony of John Catlin.)

fore it moves away, sometimes, don't you, from the warehouse?

A. Oh, yes, you complete your time.

Q. You're not concerned about when it actually drives off?      A. No.

Q. You're concerned with when it loads? [69]

A. That's right.

Q. Did your duty day close at 6 p.m.?

A. No.

Q. When did it close on a day such as August 23, 1948?

A. Anywhere between 9 and 10:30 in the evening.

Q. Do you have any recollection about what time you ceased work on this day?

A. No, I don't.

Q. Do you recall the name of the driver who was operating the Herrett Trucking Company truck?

A. We don't get the driver's name.

Q. Were you employed at Simmons' for the rest of the month of August?      A. Yes.

Q. Do you recall any truck from Herrett Trucking Company coming down to Simmons' on the succeeding day or any later days?

A. No, I don't.

Q. Is this the only truck of the Herrett Trucking Company that you ever saw down at Simmons' warehouse?      A. As far as I know.

Q. You didn't work at any other warehouse, just the one?      A. No, just Simmons'.

(Testimony of John Catlin.)

Q. Were there any other inspectors working at Simmons'? A. No. [70]

Q. You handled the whole thing by yourself there? A. Yes.

Q. Did you say you didn't recall when the farm truck was driven away, what time in the evening it was driven away? A. That's right.

Q. You said you didn't recall?

A. I didn't recall.

Q. All the potatoes on these two truck loads were number 1 potatoes, I think you said?

A. That's right.

Q. You say the applicant stated that they were going to a farm lot or feeding lot; whom do you mean by the applicant?

A. That's H. H. Simmons & Sons.

Q. So H. H. Simmons stated that?

A. That's right.

Q. You got that information from Simmons that you put on the inspection certificate?

A. That's right.

Q. The inspection certificates, Mr. Catlin, are actually not typed out by you, isn't that correct?

A. No, we write them in longhand.

Q. And then you send them to some other location where they're typed up. In the case of this one where were they sent to?

A. Grandview.

Q. And then they're returned at a later date for you to sign? [71] A. That's right.

Q. Did sometimes a day or two elapse before



(Testimony of John Catlin.)

they were able to be returned to you for signature?      A. Usually the following day.

Q. Not always the following day?

A. No.

Mr. Robinson: I think that's all.

Mr. Erickson: That's all.

(Whereupon, there being no further questions, the witness was excused.)

CHARLES F. WILLIAMSON,

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Erickson:

Q. Will you state your name, please, tell us your name?      A. Charles Williamson.

Q. Where do you live?      A. Sunnyside.

Q. How long have you lived there?

A. About two years.

Q. Are you a potato grower?

A. Yes, sir.

Q. How many acres of potatoes did you have in 1948?

A. Well, me and the two boys had about pretty close to 300 acres.

Q. Are you acquainted with the potato price support program? [72]

A. Yes, sir.

Q. You have been a potato grower for years, have you not?      A. Yes, sir.

Q. How many years have you grown potatoes?

(Testimony of Charles F. Williamson.)

A. Oh, I grewed them in Oregon about 30 years.

Q. And there has been potato price support beginning about 1946, is that right?

A. Yes; I forget just about when it was.

Q. And you have been acquainted with the programs of price support for potatoes for the last several years, then, have you not?      A. Yes, sir.

Q. Now, directing your attention to this year, you sold all of your potatoes to the—or sold your crop of potatoes where this year?

A. How's that?

Q. Where did you sell your crop of potatoes this year?

A. Well, we sold them through the warehouses down there at Sunnyside.

Q. You sold them through the Simmons & Sons Warehouse, and the Pasco Growers, and Majonnier's?

A. Yes, and Phipps & Son, through Pacific Fruit.

Q. Then you also have stock, cattle to feed, do you not?      A. Yes, sir.

Q. And you have or were feeding last summer about 200 head, or [73] something of that nature?

A. Well, we fed that many later. We was feeding along about——

Q. In August, now.

A. ——along about August there was 80 head, 85, I think. We're feeding now about 350 head.

Q. And were you acquainted with the provisions

(Testimony of Charles F. Williamson.)

of the contract that potatoes—about potatoes purchased for stock food?      A. How's that?

Q. Were you acquainted with the provisions of the contract about the purchase of potatoes for stock food?      A. Was I acquainted with it?

Q. Yes; did you know, were you acquainted with the fact potatoes purchased for stock food could not be sold in the market to others for retail human consumption?      A. Yes, sir.

Q. You knew that?      A. Yes, sir.

Q. Now, I'll hand you plaintiff's exhibit 10, and ask you if that's your signature on there, Mr. Williamson?

A. Yes. Nobody can write as bad as that but me.

Q. So that's your signature. I'll ask you the same for 11.      A. Yes.

Q. That's your signature. Now, Mr. Williamson, plaintiff's exhibit 10 purports to be a consignee's receipt for 44,500 [74] pounds net weight, or 445—100 pound sacks of U. S. No. 1, and they are loaded—or trucks number 10170 and TLE 1190 are mentioned. Are those the trucks on which the potatoes were hauled in or loaded in?      A. I don't know.

Q. Well, when did you sign these consignee's receipts, Mr. Williamson?

A. Well, I signed them there, a bunch there, for Simmons; he just had a bunch there and I just went in and signed a bunch of them; they wasn't signed every day or every load; I signed a bunch of them, and then I come up here to Chinn and signed a bunch of them.

(Testimony of Charles F. Williamson.)

Q. Well, did you purchase any potatoes; I'm not speaking about selling, now, I'm talking about purchasing; did you purchase any potatoes from either the Pasco Growers or Majonnier's warehouse, or Simmons & Sons, for any other purpose than stock food in August, 1948? A. No, sir.

Q. Now, after you signed a contract to purchase stock food potatoes from the Commodity Credit Corporation, who did you call about hauling those potatoes? A. Called up Mr. Waller.

Q. Melvin E. Waller, the defendant in this case? And what instructions did you give Melvin Waller about hauling those potatoes for stock food; what were your instructions [75] to him?

A. I told him to haul them out to my cattle out the other side of Sunnyside.

Q. You told him to haul the potatoes to your feed lot?

A. Yes, in the morning, when he first started hauling.

Q. State whether or not you gave him permission to take any potatoes to Portland or sell any of those potatoes to any other dealers on the market?

A. I never said anything about taking any only to the stock.

Q. You never gave him permission to do that, then? A. No, sir.

Mr. Erickson: That's all, you may examine.

#### Cross-Examination

By Mr. Robinson:

Q. Charley, just what was your conversation

(Testimony of Charles F. Williamson.)

with Mel. Waller on Sunday, August 22, with regard to hauling potatoes?

A. Well, I called him up and told him to come down with the truck there Monday morning at Simmons', because we was too busy with our trucks to haul them out, so he said that he'd have a truck down there.

Q. Did you have some conversation with him about returning the sacks to Simmons'?

A. Yes, I told him he had to bring the sacks back.

Q. Simmons' gave you credit for sacks, did they, when you returned them?      A. Yes. [76]

Q. You had been digging potatoes and hauling them in before that time, hadn't you?

A. Yes, we was digging before that.

Q. Well, now, where were you hauling those to before this time?

A. Well, we hauled to Simmons' that week.

Q. That is the week before August 22, before you talked to Mel Waller?

A. Yes, when we first started we wasn't getting many out because he had so many other growers coming in.

Q. Who wasn't getting very many out, Simmons'?

A. Simmons had a bunch of other growers hauling in, and we wasn't digging very many spuds, so we'd haul these spuds to our stock ourselves, and he wanted more spuds Monday, so we had our four

(Testimony of Charles F. Williamson.)

trucks busy, so we had to hire somebody to haul our potatoes to our cattle.

Q. These are the potatoes you had purchased from the government?           A. Yes, sir.

Q. Did I understand you to say, Mr. Williamson, or Charley, I guess you go by, that plaintiff's exhibits 10 and 11, these consignee's receipts, were signed by you in blank before they were ever filled out?

A. Yes, that's the way we always done, sign up a bunch of them ahead, and they'd fill them out when they got ready. [77]

Q. They weren't completed at all, then?

A. No, I just signed there.

Q. Now, I'll hand you plaintiff's exhibit 4 and ask you to take a look at that.

A. Yes, I signed that.

Q. Was that signed by you when there was no writing on it also?

A. I never paid any attention; I just signed it. I think they filled that out afterwards. See, I just went up there and just signed her up.

Q. When you went up and signed it up who did you talk with?           A. John Chinn.

Q. He waited on you personally?

A. Well, he was busy there, and one of the girls got one of them slips there and told me to sign it, and so I just signed my name there.

Q. You refer to a slip; what kind of a slip?

A. Well——



(Testimony of Charles F. Williamson.)

Q. You mean one of these forms, plaintiff's exhibit 4, in blank?

A. Well, yes; it was a piece of paper like that I signed. I never read it, I just signed it. She just said "Sign here" and I signed it.

Q. Did you talk to John Chinn that day, do you recall?

A. I don't know; I think he told her to get that slip; I [78] told him I wanted to get some stock feed spuds, and he was busy and told her to get a slip and I signed it.

Q. How many tons did you buy August 19?

A. 500 tons.

Q. You later on in September bought some others, did you?

A. Yes, I bought some more.

Q. Do you recall how much you paid for the ones you bought on August 19?

A. Yes, it was \$2.00 a ton. I gave them a thousand dollars for the 500 tons.

Q. And do you recall how much you paid in September?      A. The same price.

Q. How much did you buy in September?

A. I don't know, it was around 200 tons; I wouldn't be certain. I don't think I got a slip on that.

Q. Do you recall ever receiving back a copy of plaintiff's exhibit 4?

A. No, we never got no slip on that.

Q. You weren't given any copy at the time you were up and paid your money?      A. No.

(Testimony of Charles F. Williamson.)

Q. Did you also get some kind of a form at the time?

A. Well, this here is what he give me there.

(Whereupon, certificate dated August 19, 1948, was marked Defendant's Exhibit No. 14 for identification.) [79]

Q. I hand you defendant's identification 14, and ask you what that is, Mr. Williamson?

A. How's that?

Q. Explain what that is, this piece of paper, identification 14, that I hand you.

A. "This certifies that C. F. Williamson has made a contract"—

Q. Just a minute, I don't mean for you to read it. I mean, now, just answer this question. Defendant's Exhibit 14 is a certificate signed by John Chinn with reference to potatoes that you purchased?

A. Well, I don't know what it was. I signed, and he give me that, see.

Q. Did he give this to you at the time you signed the exhibit which is form 4, this?

A. Well, I never looked to see what the number was, whether it was 4 or what it was. The only thing I know, that was my name there.

Q. At the time you signed that in blank, Mr. Chinn handed you this piece of paper which is defendant's exhibit 14, is that right?

A. Yes, that's right.

Q. Did you ask him for something like this?

The Court: Those numbers the attorney men-

(Testimony of Charles F. Williamson.)

tions are just numbers we put on them to keep them straight.      A. Oh. [80]

Q. Did you have a conversation with Mr. Chinn at the time about this?

A. Yes, I told him "You ought to give me a slip, or something, to show the inspector that I bought them spuds" so he give me that.

Mr. Robinson: I offer it in evidence.

Mr. Erickson: No objection.

The Court: It will be admitted.

(Whereupon, Defendant's Exhibit No. 14 for identification was admitted in evidence.)

[Printer's Note: Defendant's Exhibit No. 14 is set out in full at page 327 of this printed Record.]

Q. You and Mr. Chinn had a conversation about this, then, at the time you signed this in blank?

A. Yes, we just—I went in there and wanted to get the spuds.

Q. About how long did the whole transaction elapse from the time you went in until you walked out with this exhibit 14?

A. Oh, I imagine I must have been there five or ten minutes.

Q. About five or ten minutes was the whole period of time?

A. Yes, it was just a very short time.

(Whereupon, Mr. Robinson read Exhibit 14 to the jury.)

Q. Mr. Chinn signed that in your presence?

A. Yes.

(Testimony of Charles F. Williamson.)

Q. Now, Charley, at the time that you signed the contract form in blank in Mr. Chinn's office, at that time did you have any conversation with him about whether you were [81] buying potatoes, or whether the government was still holding title to them? A. There was nothing said about that.

Q. Did Mr. Chinn hand to you or show to you or discuss with you this form FV 111? A. No.

Q. Which is plaintiff's exhibit 5?

A. No, sir.

Q. Did you have any conversation about it at all? A. No.

Q. Did you see any of these forms lying around at that time?

A. No, I never noticed any; I just signed that other there.

Q. I think you said you paid your money at that time, is that correct? A. Yeh.

Q. You bought these potatoes for livestock feed, is that right, Mr. Williamson?

A. That's right.

Q. Did you have any knowledge at that time, Charley, that the government was claiming that it still owned the potatoes after you took delivery of them?

Mr. Erickson: To which we object. The knowledge of this man is not imputable to the defendant.

Mr. Robinson: I'm just cross-examining on a matter that counsel brought out on direct. [82]

The Court: I'll overrule the objection.

Mr. Robinson: Would you read the question?

(Testimony of Charles F. Williamson.)

(Whereupon, the reporter read the last previous question.)

A. No.

Q. Do you have any information, Charley, about when you actually signed the consignee receipts that bear your signature?      A. No.

Q. Do you know the date of any of them?

A. No. There was a bunch of them there at Simmons' that he had me sign, oh, it must have been two or three weeks later. He said "Come in and sign up a bunch of them so I can get my money on them." I don't know if that was them or not.

Q. Had you hauled potatoes to your feed lot before Sunday, August 22?      A. Yes, sir.

Q. You said you were using your own trucks to haul them out at that time?

A. That's right.

Q. About how many potatoes do you suppose you had out on your feed lot prior to August 22?

A. Oh, we must have had a couple of hundred ton or better.

Q. On your feed lot where the 80 cattle were located? [83]      A. That's right.

Q. They must have been kind of deep at that time.

A. Well, he'd drive up and dump some more.

Q. That's a lot of potatoes, isn't it, in a field?

A. Yes, that's a lot of spuds.

Q. Those included the cull potatoes that you

(Testimony of Charles F. Williamson.)

were hauling as well as any others that you would get, is that right?      A. That's right.

Q. You did feed a lot of cull potatoes at that time also?

A. Yes, we hauled the culls out there.

Q. Other than telling Melvin Waller that you wanted the sacks returned, and that you had the potatoes available to be hauled out for feed, did you give him any other instructions at all, specific instructions?

A. Well, no, not on them, only that, only that night I called him and had him take out another truck load on my truck.

Q. You're talking about Monday now, aren't you?      A. Yes.

Q. You had one of your farm trucks loaded with potatoes Monday afternoon, and you called Mel and talked him into taking them out and dumping them on his place, is that right?      A. That's right.

Q. That's the one you refer to now?

A. Yes. [84]

Q. How long had you known Melvin Waller before you called him up at that time, Charley?

A. About two years.

Q. You're neighbors out there, are you?

A. Yes, he lives right across the railroad track from our place.

Mr. Robinson: I think that's all.

### Redirect Examination

By Mr. Erickson:

Q. Mr. Williamson, you had signed previous



(Testimony of Charles F. Williamson.)

contracts for purchase of stock food potatoes with the Commodity Credit Corporation, hadn't you?

A. How's that?

Q. You had signed contracts before this one with the Commodity Credit Corporation?

A. No, that's the first time.

Q. Is this the first contract for potatoes you had signed?

A. That 500 tons was the first spuds I bought from the government for feed.

Q. I thought you said you had other potatoes taken out to your feed lot previously?

A. That was culls.

Q. This was the first number ones that went to the feed lot?      A. That's right.

Q. You had been in the potato business for a number of years, and you didn't have to read this contract over, you know [85] what the provisions were, is that the reason you didn't read it, or what was the reason?

A. Well, I just knowed they was supposed to be stock feed, and I never bothered about reading it.

Q. You felt that you knew the provisions, then, and that's the reason you didn't read it?

A. Yeh, I just signed it.

Q. And this part here where you said you certify that you've read the terms and conditions of this sale as set forth herein and in form 111, terms and conditions for sale of Irish potatoes for livestock feed, and agree to abide by the terms and conditions, you signed immediately right under that, you

didn't see that, then, when you signed, particularly?

A. No, I never read it.

Mr. Erickson: That's all.

### Recross-Examination

By Mr. Robinson:

Q. Mr. Williamson, did you believe that you were buying these potatoes, or that the government was still retaining ownership of them?

The Court: I'll sustain an objection to that; I think the facts should be construed by the jury.

Mr. Robinson: That's all.

Mr. Erickson: That's all.

(Whereupon, there being no further questions, the [86] witness was excused.)

### FRED E. CARVER,

called as a witness on behalf of the plaintiff, having been duly sworn, testified as follows:

### Direct Examination

By Mr. Erickson:

Q. Will you state your name, please?

A. Fred E. Carver.

Q. Your business?

A. Horticultural inspector.

Q. Where do you reside?                      A. Yakima.

Q. And what is your capacity now in Yakima, what capacity do you hold with the horticultural department?

A. Horticultural inspector at large in charge of the fruit and vegetable inspection service in this district.

(Testimony of Fred E. Carver.)

Q. Did you hold such a job in August, 1948?

A. Yes, sir.

Q. And potatoes, state whether or not potatoes are under your inspection program?

A. Yes, they are.

Q. Now, directing your attention to on or about August 23, 1948, were you in Sunnyside that day?

A. Yes, I was on August 23.

Q. And did you observe something at the Herrett Trucking Company in regard to loading potatoes—I mean at the Simmons Company warehouse there? Did you see some potatoes [87] being loaded there?

A. Yes, sir, on a flat bed truck.

Q. And what was the number of that truck?

A. TLE 1190.

Q. TLE 1190? A. Yes, sir.

Q. And how were these potatoes being loaded, Mr. Carver?

A. Sewn sacks loaded flat on the truck, and a tarpaulin being rolled back over the load as it was being loaded, with each tier being covered.

Q. What directed your attention to this load of potatoes?

A. For short hauling it isn't customary, wasn't customary for most of those hauling in that manner to be taking quite such good care of potatoes, for those that we figured were going for stock feed.

Q. And who was with you at that time?

A. U. S. Garrecht.

Q. Who is he?

(Testimony of Fred E. Carver.)

A. He's one of the deputy inspectors, a supervising inspector.

Q. And what did you do when you observed this condition?

A. I asked the supervising inspector in that area if that was being certified for commercial shipment or if it was a stock feed shipment.

Q. And what did you ascertain?

A. He advised that to the best of his knowledge it was being [88] certified for stock feed delivery.

Q. Then what did you do then?

A. I told him that it was practically——

Mr. Robinson: I've let it go so far, but I'm going to object to what he told somebody else.

The Court: I thought the question was what he did then.

Mr. Robinson: Well, maybe I should strike his answer.

The Court: Yes, the answer will be stricken, if it's something somebody told you. Just say what you did.

Q. Just tell what you did, Mr. Carver.

A. I went to the hotel, where it was practically noon, where I met the inspector who was certifying the shipment, and asked him if the load was——

Mr. Robinson: Just a minute——

The Court: Conversations that you have with other people outside of the presence of the defendant are not admissible under the rules. You can tell you saw somebody and talked to them. Don't say

(Testimony of Fred E. Carver.)

what they said, and just go ahead and tell what you did.

A. Advised the inspector to keep track of that load and to advise me at the time it left the Simmons warehouse so we could determine whether or not it was going to be delivered to a feed lot or if the truck was moving in violation of [89] our state shipping permit law, outside of the district.

Q. What happened next, Mr. Carver?

A. The truck completed loading approximately 5 o'clock, and Mr. Garrecht and myself went down to see where the truck was stopped, near the Herrett Trucking Company office. I posted an inspector there to advise when it was moved from there, later took up a position myself, about 7 o'clock that evening, and watched the truck until it left the place where it had been located.

Q. Well, what time did it leave the place there?

A. About midnight, our time; I believe that would have been about 11 o'clock under their time.

Q. And was there any other truck that left with it?

A. Yes, an empty van followed it immediately.

Q. Do you know the license number of the van?

A. The trailer number was 1374, TLE 1374; the motorized part was TKE 12310.

Q. Now, did these two vehicles accompany each other?

A. Yes, the flat bed went first, with the van immediately following, and by a circuitous route went

(Testimony of Fred E. Carver.)

out to the Saul Road, to the end of the Saul road, to the Wilson Feed lot.

Q. And what did the trucks do when they got to the Wilson feed lot?

A. One backed up to the other, and some lights, which I presume were gasoline lights, were set up in the van, and [90] they began transferring sacks of potatoes from the flat bed truck to the van.

Q. And where were you?

A. In a farm lane slightly less than an eighth of a mile across an open field.

Q. Who was with you? A. Mr. Garrecht.

Q. Could you see what was taking place?

A. Very plainly, with the position of their lights, and Mr. Garrecht also at my request walked down to a very short distance from the truck, twice, during the proceedings.

Q. And state whether or not the potatoes were transferred from sacks into other sacks?

A. At the start of the operations we could hear potatoes either being dumped loose into the truck or being dumped into sacks; being inside the van we were unable to determine which. Later that evening they ceased that, and transferred the sewn sacks as such to the van.

Q. Well, now, were any dumped for stock food?

A. Yes, after they were well along with the transferring of the load, they brought the lights out and placed them on the flat bed truck, and I would estimate that somewhere between 65 and 75 sacks were opened and dumped in the feed lot.



(Testimony of Fred E. Carver.)

Q. And what time did they finish that operation there that [91] night?

A. Very shortly before 3 o'clock.

Q. That was 3 o'clock in the morning of the 24th?

A. That's right.

Q. Then what happened?

A. The trucks were taken back into Sunnyside, and the van was parked on a lot across the street from the Herrett Trucking Company office, and the flat bed parked just off the street alongside the trucking company office.

Q. About how many sacks were on the van at that time?

A. Well, roughly 250.

Q. And were they covered, or uncovered, in the van?

A. Well, that was a covered van.

Q. I see; and how long did you observe the truck that night?

A. Well, it was raining at that time, and we left at 3 o'clock with instructions to one of the inspectors to go down at 6 o'clock in the morning and find out from any wheel tracks through the mud or grass and weeds whether or not that truck had been moved, and for him to make trips during the morning to determine whether or not it was moved, and I returned myself, Mr. Garrecht and myself, about noon.

Q. You and Mr. Garrecht returned at noon on the 24th?

A. Yes, sir.

Q. About 12 o'clock noon?

A. Yes, sir. [92]

(Testimony of Fred E. Carver.)

Q. What did you see when you came back on the 24th?

A. The van was still in its position on the trucking company lot.

Q. Had it been moved?

A. It had not, from any evidence of tire marks in the ground.

Q. What did you observe next?

A. The truck was moved during that afternoon from the lot to a position at the west end of the block, alongside a small shed, and I posted Mr. Garrecht and another inspector across the street and up a little ways, to observe the operation at that time.

Q. And did you observe them yourself at that time?

A. No, I did not. I left them there to watch that.

Q. When did you observe the van again?

A. About 7 o'clock that evening. After various inspectors had reported its operations, I took up a position across the tracks, as the truck had again been moved, and moved back to its place alongside the shed.

Q. And at 7 o'clock that evening you observed the truck again, and where was it then?

A. In the meantime it had been moved back to the position beside the shed, a block from the Harrett Trucking Company office, and I sent one of the inspectors then to determine what was going on, and we stayed there until the van moved out about 11 o'clock that evening. [93]

(Testimony of Fred E. Carver.)

Q. And when the van moved out, who was the inspector that was with you?      A. Mr. Garrett.

Q. What did you do when the van left?

A. We followed it to where it went around to the Harrett Trucking Company office and parked at the south side of the office until midnight.

Q. What happened then?

A. It left and went up to the housing project, and stopped there for twenty or thirty minutes, and then pulled out on the main highway.

Q. What happened then?

A. It went from there to Granger, and across to the Toppenish road, and out through Toppenish to the Goldendale highway, and on the Goldendale highway through Goldendale.

Q. What happened then?

A. They stopped at a small cafe at Goldendale, and the drivers, the driver and his helper, went in and had a cup of coffee and then continued their journey on west on the Goldendale-Portland highway beyond the turnoff that goes to Biggs Ferry.

Q. About how late in the morning was it when you last saw the truck?

A. Shortly before 2 o'clock on the morning of the 25th.

Q. And where was the truck then? [94]

A. It was headed west on the main highway.

Q. On the Oregon side of the river?

A. No, on the Washington side of the river.

Q. That's all, you may examine. Oh, just a min-

(Testimony of Fred E. Carver.)

ute. Was there another load of potatoes that was loaded the night of the 24th?

A. Yes, sir, a small truck with a few sacks on was loaded at the Simmons warehouse that same day.

Q. And where was that——

A. Pardon me; the 24th, or the 23rd?

Q. The 24th—I don't know, what date was it, now? I'm asking about that small load, anyway.

A. That small load that I have in mind was loaded on the 23rd at Simmons'.

Q. And where was that taken?

A. It moved to the Harrett Trucking Company, and Mr. Klassen and Mr. Bruce followed it when it left there.

Q. Did you observe a load going out of the Pasco Warehouse on the 24th?

A. You mean Majonnier's?

Q. Majonnier's, yes.

A. There was a flat bed was loaded there——

Mr. Robinson: I object to the answer as not responsive.

The Court: Better read the question. [95]

(Whereupon, the reporter read the question, as follows: "Did you observe a load going out of the Pasco Warehouse on the 24th?")

A. Yes.

Q. What did you observe with reference to that?

A. The load instead of being loaded of sewn sacks, being loaded flat, crossways on the truck, was loaded with sacks unsewn, and the sacks stacked

(Testimony of Fred E. Carver.)

two high on the truck, and the truck moved down to the Harrett Trucking Company, just across the street from the Harrett Trucking Company office, and parked there for quite a while that afternoon.

Q. Then what happened to it?

A. Well, some sacks were removed from that truck, and it later went out to the feed lot.

Q. And when it came back was it empty?

A. Yes, sir.

Mr. Erickson: That's all.

### Cross-Examination

By Mr. Robinson:

Q. Mr. Carver, to kind of boil this down, in case there may be some question about exactly how many loads were involved; on Monday morning the Harrett Trucking Company truck at Simmons Warehouse loaded some 315 or 320 sacks, isn't that right?

A. Correct.

Q. And that's the loading operation that you observed when [96] you went down Monday morning and talked to your inspectors?

A. That's the one that was observed, yes, sir.

Q. That's one of those you observed, possibly?

A. Yes.

Q. That was a flat bed truck? A. Yes, sir.

Q. No side boards of any kind on it?

A. No, sir.

Q. You didn't count the number of sacks on the load, I don't suppose?

A. I did not. The inspector who was check loading would normally do that.

Q. That wasn't your job? A. No.

(Testimony of Fred E. Carver.)

Q. A tarpaulin and some ropes were used to fasten the load on the truck? A. That's right.

Q. And about 5 o'clock it moved down to the Harrett Trucking Company office?

A. That's correct.

Q. The Harrett Trucking Company is on the main street in Sunnyside, isn't it?

A. On the north and south street, yet.

Q. On the main north and south street?

A. Yes. [97]

Q. It's how far from the main intersection?

A. Three blocks, I believe.

Q. You're sure it's that far?

A. Two blocks from the main intersection.

Q. The Harrett Trucking Company property includes their office and shop, and then a lot right across the street on the opposite side of the main street, where they have some equipment parked?

A. They have some equipment, and I don't know as to the ownership.

Q. That's property they use?

A. They use it, yes, sir.

Q. And on Monday, August 23, your observation was that the truck was parked down there; did you say parked on the lot, or the main street?

A. No, it was parked on the east and west street, on the south side of the east and west street, not quite at the east end of the block.

Q. That would be across the street on which the office is on, correct? A. That's correct.



(Testimony of Fred E. Carver.)

Q. Then that truck—you didn't stay at that truck location?

A. I did not. I had one of my deputy inspectors—either I was there or one of the deputy inspectors was there until it moved out. [98]

Q. Now, to get it chronologically straight, we're up to Monday afternoon about 5 o'clock. Did you then see a Williamson truck, or rather a small farm truck, later that evening? A. Yes, sir.

Q. When did you first see that truck, Mr. Carver?

A. Approximately 7 o'clock, I believe, when I first noticed it, when I first re-observed the names.

Q. When you first noticed it was it at the Simmons Warehouse or down at the truck company?

A. When I first saw it it was at the Simmons Warehouse.

Q. And then it was taken to the trucking company location? A. That's right.

Q. And it was moved from there, and two of the other men followed it, but you didn't go with it?

A. That's right.

Q. You didn't see it taken to the Mel Waller place and the potatoes dumped on the ground?

A. I did not see that. The inspectors followed that.

Q. Did your inspectors return then to you after they had been at Waller's place? A. Yes, sir.

Q. When they came back did you see Mel Waller after that unloading operation had occurred, the one at his place, do you remember seeing him? [99]

(Testimony of Fred E. Carver.)

A. I wouldn't know whether I saw him or not. I saw the men that were——

Q. Handling potatoes?

A. ——handling the potatoes. It was dark.

Q. Will you stand up, Mel? This is Mel Waller, Mr. Carver. Do you remember whether you saw him that evening after your men came back from watching the load dumped at his place?

A. We were not as close as we are now, so I wouldn't want to state that I recognized any individual as such.

Q. After your men had returned from watching the potatoes from the small truck dumped at Waller's place—incidentally, do you know when they returned that evening?

A. Approximately 11 o'clock.

Q. That's about 11 o'clock—Sunnyside was on different time than Yakima, weren't they?

A. They were on different time.

Q. Is that 11 o'clock Yakima time or Sunnyside time?      A. Yakima time.

Q. About 11 o'clock Yakima time, that would be 10 o'clock Sunnyside time?      A. Approximately.

Q. Your men came back from having seen the small truck unloaded?      A. Yes, sir. [100]

Q. Did you see the small truck come back about the same time?      A. I don't recall.

Q. You don't recall whether it was parked at the Harrett location?

A. I don't recall that it was brought back.

(Testimony of Fred E. Carver.)

Q. Did you see Mel Waller get in his car then and drive out to the south?

A. I didn't notice. There were several private cars moving around. I wasn't paying any particular attention to private cars.

Q. You don't recall having seen one proceed down south out of Sunnyside about that time?

A. None in particular.

Q. Your last observation was when the truck and van—or was there also a car?

A. Truck and van.

Q. Just the flat bed truck and the van?

A. That's right.

Q. Your recollection that you have is that first the potatoes were sacked from one—from the flat bed truck to the van, and then after that, why, what remained of the load was dumped off on Williamson's feed lot; first the sacking operation and transfer to the van occurred at the feed lot, and the rest were dumped off on the ground?

A. There were some apparently being transferred from sacks to [101] either other sacks or loose in the van, and then the major portion of it was the branded sacks, were transferred with no dumping, and the balance of the load, some estimated 70 sacks, were dumped in the feed lot.

Q. That's just an estimate on your part, could have been more or less?      A. Yes.

Q. There were about three men doing it, weren't there?      A. Four men, I believe, doing that.

Q. Four men all dumping sacks at that time?

(Testimony of Fred E. Carver.)

A. That's right.

Q. The truck and van then returned to town about 3 o'clock in the morning?

A. It got in about 3 o'clock.

Q. You say there were gas lights and things set up so there would be plenty of light for the men?

A. As I recall it, there were two gas lights set up in the van, and those were later moved on to the flat bed truck so they would have enough light to work.

Q. That was the light by which you observed what was going on?      A. That's correct.

Q. Now, about what time, Sunnyside time, did darkness come on those days, do you recall?

A. Sunnyside time, did you say?

Q. Yes; that would be the early time. [102]

A. Oh, I'd imagine somewhere around 8 o'clock or 8:30.

Q. That would be about 9 o'clock Yakima time?

A. About that.

Q. You observed when you were watching these trucks that the trucking operation and movements of the Herrett Trucking Company were pretty much around-the-clock operations, weren't they?

A. Well, they seemed to be at that time.

Q. You saw a lot of other trucks moving besides the ones involved here, didn't you?

A. Yes, there was a van, apparently a loaded van, left there at, oh, I would judge around 10 o'clock, just prior to the time the small truck left.

Q. That was on Monday, the 23rd?

(Testimony of Fred E. Carver.)

A. Yes, sir.

Q. And the flat bed and the van were both brought back after this transfer operation at the feed lot, and put on this open lot?

A. No, sir; the van was put on the open lot; the flat bed truck was parked on the same side of the street and just north of the office.

Q. Did you climb in the truck, the van, and count the sacks?        A. No, sir.

Q. Did you go in the van at all? [103]

A. No, sir. I went to it to check the number.

Q. To look at the license number, you mean?

A. To re-check it, yes, sir.

Q. To be sure it was still the——

A. Two of the inspectors did, yes, sir.

Q. But you didn't climb into the van at all?

A. No, sir.

Q. That was a van that was capable of holding 15 or 16 ton of potatoes?

A. Very easily, yes, sir.

Q. A pretty large van?        A. A large van.

Q. And the following day you didn't get on the job of looking at this until about noon, is that what you said?        A. Myself, that's correct.

Q. You didn't see any loading going on before that time, then, of any of the trucks?

A. No, not myself.

Q. The truck that was loaded on Tuesday, the 24th, came down to the Herrett location at about what time?

A. I'm not positive as to the time. I think I first

(Testimony of Fred E. Carver.)

noticed it as being there somewhere between 2 and 2:30, as I recall.

Q. Was it obvious that it had a load of potatoes on it?      A. Quite obvious. [104]

Q. The other, the day before, was too, wasn't it?

A. Well, it was to us. We had been working on it, yes.

Q. The tarpaulin didn't conceal the fact there was potatoes on it?

A. As I recall it, there was no tarpaulin over the second load.

Q. You don't remember it on the second one. All right. Then there was some movement of the potatoes during the daylight hours before dinner on Tuesday, wasn't there?      A. Yes.

Q. That was on the main street, or within a half a block, wasn't it?      A. That's right.

Q. That was a clear day, so you didn't have any trouble seeing?      A. That's right.

Q. As close as you wanted to get, anyhow?

A. That's right.

Q. Out at the feed lot you say there were four men. Is it possible that you could be mistaken, because you weren't close enough to observe? It might have been just three?

A. There might have been just three, but I feel quite sure that there were four men there working. I might have been mistaken, as they were moving back and forth on the van and in and out of the van. We might have been mistaken. [105]



(Testimony of Fred E. Carver.)

Q. Fred, you're in charge of the horticulture operations in this district, aren't you?

A. That's right.

Q. The district runs how far?

A. Yakima and Kittitas Counties.

Q. And you say that there was a requirement that there be some kind of a permit if potatoes are shipped out of the district?

A. That is correct. There is a state law that requires that any potatoes going out of the district be covered by a shipping permit.

Q. Did you know at the time when the truck was finally loaded and started out toward Granger and Goldendale, did you know those were potatoes that had been purchased by Williamson from the government?

A. At that time our certificate had been issued and so stated, yes

Q. Weren't these potatoes supposed to be stopped by you when the transportation commenced out of that area there?

A. They hadn't violated any law until they had crossed the county line.

Q. Well, you didn't stop the truck at the county line, did you?

A. No. Had I been wishing to invoke the horticultural law it wouldn't have been necessary particularly to have stopped [106] the truck. I could have contacted the prosecuting attorney and asked him for a warrant for the violator.

(Testimony of Fred E. Carver.)

Q. That was moving then without a horticultural permit?      A. That's right.

Q. Did you know at the time or did you think at the time that these potatoes belonged to anyone besides Williamson?

A. I had no reason to think other than the fact that they had been purchased by Mr. Williamson as a stock feeder, as our certificate stated.

Q. You didn't think at the time these potatoes were owned by the government, then?

A. Well, I knew at the time they were stock feed potatoes which were sold under those provisions to the government.

Q. You thought if they were owned by the government you would have stopped the truck before that?

Mr. Erickson: Just a minute, I object to that.

The Court: I think that's argumentative; sustain the objection.

Q. Mr. Carver, you didn't stop the truck and let the people on it know that the potatoes were of a kind that weren't supposed to be moved out of the area there, did you?      A. I did not.

Q. Had you done so that would have been the end of it.

Mr. Erickson: Now, just a minute——

The Court: I'll instruct the jury to disregard [107] that, and it will be stricken from the record, an argumentative remark. Is that all the questioning?

Mr. Robinson: That's all.

(Whereupon, there being no further questions, the witness was excused.)

U. S. GARRECHT,

called as a witness on behalf of the plaintiff, having been duly sworn, testified as follows:

Direct Examination

By Mr. Erickson:

Q. Will you state your name, please?

A. U. S. Garrecht.

Q. And your business?

A. State Horticultural Inspector.

Q. And during August, 1948, where were you stationed, Mr. Garrecht?

A. Why, part of the time in the Sunnyside area.

Q. Directing your attention to the 23rd day of August, were you in the presence of Mr. Carver at that time, in Sunnyside?

A. Yes, I was.

Q. And what did you observe there with reference to the loading of some potatoes at the Simmons warehouse?

A. Oh, we drove by the place several times to see how the load was progressing.

Q. What directed your attention to the truck in the first instance? [108]

A. Oh, the careful manner in which they were protecting the load from the sun.

Q. And explain how that was.

A. Well, ordinarily, why, if the potatoes were going to be dumped in a feed lot, no-one ever bothered to cover it, because they were due to lay in the sun permanently, and we just thought it was rather

(Testimony of U. S. Garrecht.)

queer that this particular load was being covered.

Q. And then what happened? Just go ahead, now, and relate chronologically, I won't ask you individual questions, but tell us what happened as far as you were concerned from then on during the evening.

A. Well, we followed the load down to the trucking plant, and then parked our cars in different advantageous positions within a block or two of the truck, and stayed there until it moved.

Q. Well, what time did the truck move?

A. Why, it was close to midnight.

Q. And where did the truck go?

A. Why, we followed it out a short way, a lane into a feed lot.

Q. Did you know whose feed lot it was?

A. No, we didn't.

Q. And did any other truck accompany this loaded truck?

A. Yes, there was a large van accompanied the flat bed truck [109] that had the potatoes on it. When they arrived at the feed lot, why, one backed up to the other, and they started transferring potatoes from the flat bed truck into the van.

Q. And how many men were there working?

A. Well, we couldn't see them all; we could hear them talking, but I observed at least five men.

Q. You think there were five men there?

A. Well, I'm not quite positive. After it got real dark I walked up very close to the truck, and I could hear four or five people talking inside the

(Testimony of U. S. Garrecht.)

truck. Most of the time there was only four men working outside, but we didn't know how many were inside.

Q. Was it dark or moonlight at that time?

A. Well, it was fairly light that night.

Q. And how far away were you?

A. Well, I got within about—I would judge about fifty feet of the truck.

Q. About fifty feet?           A. Yes.

Q. Did anybody apparently see you there at the van?           A. No, they did not.

Q. Then what happened? When did they finish this operation?

A. Well, they actually finished about 3 o'clock in the morning.

Q. And then what happened? [110]

A. Well, we just followed the van back to town.

Q. Now, the potatoes were all in the van, is that right?

A. Well, we figured they dumped between 65, or 50 and 65 sacks on the ground before they left.

Q. And the rest of them were in the van?

A. Yes.

Q. Had they been transferred from one sack to another as far as you know at that time?

A. Well, I couldn't actually tell. We heard them pouring potatoes in the truck. We didn't know whether they was pouring them loose on the floor, or pouring them in sacks; we couldn't tell.

Q. Was the flat bed truck empty, then, when they went out of there?           A. Yes.

(Testimony of U. S. Garrecht.)

Q. Then what happened?

A. We followed the truck back to the trucking lot and watched them park it, and then we went home.

Q. Now, where did they park it?

A. Across the street from the trucking company, in what seems to be their parking lot for various vans.

Q. The Herrett Trucking Company parking lot?

A. Well, I imagine it was the Herrett Trucking Company parking lot, because they had two or three trucks there most of the time. [111]

Q. What was the condition of the weather there that night?      A. It was raining.

Q. And what time did you cease observing the truck?

A. I believe it was 3 o'clock in the morning.

Q. When did you take up your observation of the truck again?

A. I believe it was about 1 p.m. the following afternoon.

Q. Had the truck been moved since you had last seen it the evening before?      A. No, it hadn't.

Q. And what happened at 1 p.m. when you started observing it again?

A. Well, I believe a little bit later in the afternoon, I can't recall just how soon, why, they moved the truck around to a little shed that adjoins the property, and opened the side door, and as far as we could tell, they were re-sacking the potatoes.

Q. Inside of the van?



(Testimony of U. S. Garrecht.)

A. Yes, they were doing it inside the van with the side door open. I walked around on the outside of the truck. I could see the empty sacks coming out of the side door, but I couldn't look in.

Q. What happened after that, then, after you observed them re-sacking?

A. That seemed to keep up more or less until dark, and we were watching from various places around the truck. [112]

Q. State whether or not any more potatoes were placed in the van?

A. Well, during the period—no, I never actually saw any more potatoes go in the van.

The Court: It's time to take our overnight adjournment. Remember what I said to you about not talking about the case either to each other or to any outsider. The Court will adjourn until tomorrow morning at 10 o'clock.

(Whereupon, at 4:30 o'clock p.m. the Court took a recess in this cause until Tuesday, February 15, 1949, at 10 o'clock a.m.)

Yakima, Washington,  
Tuesday, February 15, 1949, 10 o'clock a.m.

(All parties present as before, and the trial was resumed.)

U. S. GARRECHT,  
a witness on behalf of the plaintiff, resumed the stand and testified further as follows:

(Testimony of U. S. Garrecht.)

Direct Examination (continued)

By Mr. Erickson:

Q. Mr. Garrecht, last night I believe we stopped about midnight on August 24, or the early morning of August 25. What happened on that morning with reference to this van truck of potatoes?

A. Why, I believe it was kept under watch by different members of the horticultural department all during the day. [113]

Q. And then what happened as far as you were concerned?

A. Why, that evening we took up a position across the tracks from the van and watched it until approximately 12:30.

Q. What date was that?

A. I believe it was the 24th and 25th.

Q. Did you observe the van pull out for Portland?

A. Yes.

Q. What time was that?

A. Why, I believe it was approximately 12:30.

Q. Well, what night?

A. Well, it was the morning, then, of the 25th.

Q. This was half an hour past midnight on the morning of the 25th of August, 1948?

A. As I recollect, that's it.

Q. Who was with you, Mr. Garrecht?

A. Mr. Fred Carver.

Q. And where did the van pull out from?

A. Why, it was parked in this—alongside this small shed adjoining the trucking company lot, and

(Testimony of U. S. Garrecht.)

it had been there all evening, and as soon as it moved away, why, we followed it.

Q. And where did you—just describe in your own words how you followed it.

A. Well, they took a rather odd way of getting out of town, and stopped right at the edge of town near a housing [114] project, so I drove the car into the housing project back of a house, and turned off the lights, and we just waited approximately half an hour until they started; we wanted to see which direction they were going, to Pasco or towards Seattle.

Q. Well, just go ahead and tell us what happened next.

A. Well, after about a half an hour, why, the truck took off towards Granger, and we stayed fairly close, and they turned off at Granger to the Satus cut-off to Toppenish, and we followed them right into Toppenish, and the truck turned the corner going towards Goldendale, and we followed them to I believe it was the foot of Satus Pass, and they had pulled off at the side of the road right at the base of the pass, and evidently had some engine trouble, so we just passed them and went on up to the summit and had some coffee, and after about an hour, why, they came over the pass, and we followed them down to Goldendale where they stopped again, the truckers stopped and had lunch, and from there on we followed them down past the Maryhill Ferry for about ten miles past the Maryhill Ferry, just

(Testimony of U. S. Garrecht.)

to make sure they were going on the road to Portland.

Q. And when did you stop following them?

A. Well, I think it was about five miles beyond the Maryhill Museum.

Q. Was that about the county line there, or close to it? [115]

A. Well, I wouldn't know about the county lines down there.

Q. Was that main road, the way they were headed, the road to what point?

A. Vancouver, Washington.

Q. It was on the north bank of the Columbia?

A. Yes.

Q. And about what time of the morning was that?

A. Why, I think we stopped following them at fifteen minutes after four.

Q. It was starting to break daylight?

A. Yes, it was just getting daylight.

Mr. Erickson: That's all; you may examine.

#### Cross-Examination

By Mr. Robinson:

Q. Mr. Garrecht, directing your attention to the evening of Monday, August 23, did you see the small farm truck driven out toward the Waller ranch?

A. Well, from where I was, why, I could see that the truck left, yes.

Q. You saw a small truck driven out toward the Waller ranch that evening, didn't you?

(Testimony of U. S. Garrecht.)

A. Yes.

Q. You didn't follow that truck, did you?

A. No, sir.

Q. You stayed at the Herrett Trucking Company plant, or near there, is that correct? [116]

A. Yes, sir.

Q. That small farm truck returned to the Herrett Trucking Company plant, did it not?

A. Well, that I can't remember, because I wasn't interested in the small truck.

Q. You don't recall its returning?

A. No, but I recall the other two boys that followed the truck coming back and saying where it went, and that it had come back.

Q. And about the time when they came back and reported back to you, do you recall Melvin Waller taking off in his car out toward the south end of town?

A. Well, at that particular time I didn't know any of the boys that were operating down there at all. I wouldn't have recognized him.

Q. You don't remember having seen Melvin Waller, sitting here with the brown jacket on, having driven his car out of town Monday evening, late Monday evening?

A. I know there was a car moved out from the trucking company firm, but I wouldn't know who was in it.

Q. I see. Now, you say when the truck moved out finally on its way over Satus, that it stopped at a house in one of the housing developments there?

(Testimony of U. S. Garrecht.)

A. Yes, just on the edge of town.

Q. Private house, stopped there awhile? [117]

A. Where it meets the main road, yes.

Q. Two men were in that truck, weren't they?

A. Well, we saw two come out as we pulled up behind it, and they stopped the truck. We were too far behind it to see who got out.

Q. You aren't claiming that you recognized any of those boys that got out as being Melvin Waller?

A. No, sir.

Q. They were two truck drivers?

A. As far as I knew; I had never seen any of the boys before, and I wouldn't know them, no.

Q. Now, you talked about some rain or precipitation. Actually, there was nothing more than a very light mist that night, was there?

A. Well, it wasn't a very heavy rain, no.

Q. No; it had been pretty hot that day, on Monday, hadn't it?      A. I couldn't tell you.

Q. Now, the shed to which you make reference is one that's just a block off the main street, isn't it?      A. Yes, sir.

Q. That's the shed from which the truck started up, and near which or in which some of the potatoes were handled, is that correct?

A. That's right.

Q. That's a kind of an old shack building, apparently a former [118] residence, isn't it?

A. I believe it's just a one-room shack.

Q. Looks like that kind of a building?

A. Yes.



(Testimony of U. S. Garrecht.)

Q. Hasn't any truck doors or anything like that that trucks go in and out of?      A. No.

Q. Some of the potatoes were handled outside the shack, too, weren't they, some were set off outside, and some handled inside?

A. Well, there was a few potato sacks out there.

Q. There were some sacked on the outside?

A. I walked by the building several times that evening, and I did see a few sacks of potatoes.

Q. Did one of your boys park a car just across the street from there and sit there in the car?

A. Well, back north up the street at the railroad station, where you could see right down.

Q. You walked by several times when the trucks were there?      A. Yes.

Q. The folks were working there; you didn't notice anyone trying to hide anything, did you?

A. No, I couldn't especially say they were hiding anything; the truck was turned in such a way that the side door faced the building, and there wasn't any way to walk between the [119] truck and the building, so I couldn't see anything except the blank side of the truck.

Q. It was arranged for the convenient handling of the potatoes, wasn't it?      A. Yes.

Mr. Robinson: That's all.

(Whereupon, there being no further questions, the witness was excused.)

D. C. KLASSEN,

called as a witness on behalf of the plaintiff, having been duly sworn, testified as follows:

Direct Examination

By Mr. Erickson:

Q. State your name, please.

A. D. C. Klassen.

Q. Where do you work, Mr. Klassen?

A. Grandview and Sunnyside.

Q. And where do you reside?

A. Grandview.

Q. And your business?

A. Horticultural inspector.

Q. You work under Mr. Carver's office?

A. Yes, sir.

Q. Mr. Klassen, were you called into the investigation of a certain potato case at Sunnyside on August 23, 1948?      A. Yes, sir.

Q. And at whose direction did you go to work on that case? [120]

A. In the first place it was called to my attention by Mr. Catlin, who was working at the house where the potatoes were being sorted and loaded.

Q. And did you talk to Mr. Carver, without relating what the conversation was, about this case?

A. Mr. Carver came up; he had noticed the same thing that we had been noticing.

Q. What had you noticed?

A. I noticed that the potatoes were very carefully being placed on this truck, and as each tier was placed on the truck, a canvas was pulled over

(Testimony of D. C. Klassen.)

it, apparently to keep the sun from shining on the potatoes.

Q. Do you know what kind of potatoes these were?

A. These were White Rose potatoes.

Q. And do you know whether or not they were stock food potatoes?

A. That was what we were working on them for, as stock feed potatoes.

Q. Were they stock food potatoes?

A. They were stock food potatoes, yes.

Q. And in what truck were they at that time, what kind of a truck?

A. On a long flat bed truck.

Q. Did you take the license number?

A. I did, sir, yes. [121]

Q. What was the license number?

A. I'd have to check it with my record. That was TLE 1190.

Q. And what did you do after that, Mr. Klassen?

A. It took practically all day to load this truck, and I stayed pretty much in the vicinity to watch the loading of the truck, and then after it was loaded and pulled away I followed it to where it was parked.

Q. And where was it parked?

A. At the south side of the street, at the Herrett Trucking Company office.

Q. On the south side of the street right opposite from the Herrett Trucking Company office in Sunnyside?

(Testimony of D. C. Klassen.)

A. Just opposite, in Sunnyside, yes.

Q. And how long did you observe it there?

A. I watched it until about noon—or until dinner time, and then it was taken over by Mr. Carver and Mr. Garrecht.

Q. You didn't watch it any more after that?

A. Not that particular truck, no.

Q. And what truck did you observe after that?

A. There was a small truck loaded after the large truck was.

Q. What was the license number of that truck?

A. It was TKE 10170.

Q. What kind of a truck was that?

A. That was just a small flat bed truck.

Q. How many sacks were on that? [122]

A. I don't remember; it would be around 100, 150, somewhere in there.

Q. And how long did you observe that truck?

A. Until about 11:30 that night.

Q. And what happened then?

A. Well, we followed this truck out of town. When they pulled out we followed it to its destination, which was a feeder lot or ranch out south of Sunnyside, where the potatoes were dumped.

Q. Do you know who owned this feed lot?

A. We found out afterwards it belonged to Mr. Waller.

Q. This was on the night of August 23?

A. August 23, yes.

Q. And where were these potatoes taken from?

(Testimony of D. C. Klassen.)

A. From Simmons, H. H. Simmons & Sons warehouse.

Q. And do you know what grade they were?

A. Number 1, U. S. Number 1.

Q. Number 1 potatoes? A. Yes.

Q. White Rose? A. White Rose.

Q. And what happened to this truck after it took the potatoes out to the Waller feed lot?

A. It came back to Sunnyside.

Q. Did you observe any more at that time? [123]

A. No, we didn't pay any more attention to it that night.

Q. Did you observe anything the next day?

A. The next day at different times we watched this other van. I had very little to do with it the next day.

Q. What did you have to do with the observation the next day if anything, Mr. Klassen?

A. Just occasionally I'd drive over and see if this particular van, there was a certain van mixed up in this that we were watching, to see if it would move.

Q. And what did you observe during the time you watched it?

A. During the day there was practically no activity around there.

Q. Did you observe it any that night, the night of the 24th? A. Yes.

Q. What happened then?

A. Most of the activity we observed was later in the night of October 23.

(Testimony of D. C. Klassen.)

Q. You mean August 23? A. August 23.

Q. Well, what happened then; what did you observe?

A. Well, Mr. Bruce and I drove out and watched this truck load being dumped at the feeder lot; we went back to the hotel to wait for Mr. Carver, to report, and about 1:30 he came to get me to go out and see where they had watched—had seen these trucks parked, and when we got out there there was this big van and this flat bottomed truck backed back to back, and they had several gas lights there, and they were carrying sacks from the open truck into the van.

Q. Did you observe whether they were dumping the sacks, or transferring the potatoes?

A. They were just transferring the sacks from one truck into the van.

Q. Do you know about how many they transferred?

A. The estimate was right around 300 sacks, somewhere in that neighborhood; couldn't tell exactly.

Q. Did you observe any potatoes being transferred from one sack to another sack?

A. Not that night.

Q. Did you observe that later?

A. The next evening, yes.

Q. Well, go on, tell what happened the next evening.

A. Well, one of the boys had been watching this truck, and then later in the evening this van was



(Testimony of D. C. Klassen.)

parked at a little building along near the O. W. track, and there was a light in this building, and there was activity going on, so to find out what was going on I went up to the window and saw them transferring the branded sacks into plain sacks and loading them into this van.

Q. Where were the potatoes coming from, the branded sacks?

A. They were in this building. [125]

Q. In this little building?

A. In this little building.

Q. Where was this building located with reference to the Herrett Trucking Company?

A. It would be west, just a block west of the Herrett Trucking office.

Q. On whose property was this building?

A. I don't know whose property. It was next to their parking lot where they parked all their vans.

Mr. Robinson: We'll stipulate that was Herrett Trucking Company property.

Mr. Erickson: You may examine.

**Cross-Examination**

By Mr. Robinson:

Q. Mr. Klassen, in the evening of August 23, then, you and Mr. Bruce followed the—it was kind of a farm truck, wasn't it?

A. That's what it was.

Q. Did it have any name on the outside at all? Did it have Williamson's name?

A. I don't remember that.

(Testimony of D. C. Klassen.)

Q. It didn't have any Herrett Trucking Company name?      A. I don't think it did.

Q. It wasn't a commercial truck, was it? It was the type that farmers ordinarily use?

A. It could have been a farmer's truck. [126]

Q. You followed it out to a place you subsequently discovered was Mel Waller's place, and saw it dump potatoes?      A. Yes.

Q. You followed it back to town?

A. No. When we noticed all the potatoes were dumped we went back to town. We were satisfied.

Q. You don't follow it back to the Herrett Trucking Company plant?      A. No.

Q. You didn't see the defendant Mel Waller, sitting here at the end of the table, drive his car away from the plant after that time? Do you recall whether you identified him dumping off the potatoes at his place?

A. At the time I had never seen Mel Waller.

Q. You were too far away?

A. I was too far away, and up to that time I had never seen Mr. Waller, didn't know who he was.

Q. There weren't any lights put up out there?

A. Oh, yes, they had a light; you could see very plainly what was going on.

Q. They had a lantern of some kind?

A. I don't know what they had, but it was light enough there so you could see the potatoes were being dumped.

Q. When you went out to the Williamson feed lot, after Mr. Carver came down and got you,

(Testimony of D. C. Klassen.)

you didn't see any potatoes [127] being resacked out there?      A. No.

Q. The operation had already been going on for some time when you got there?

A. How's that?

Q. The operation had already been going on for some time when you got there?

A. Yes. The only operation at that time——

Q. The flat bed truck was pretty well unloaded?

A. It was about half unloaded.

Q. Then you saw a portion of that load dumped out on the ground at Williamson's place?

A. Yes.

Q. Now, when you observed the next day the truck at this shack or shed to which you had made reference, that was on Tuesday afternoon and evening?      A. Yes.

Q. Some sacks of potatoes sitting on the outside of that place, too?

A. I didn't see any on the outside.

Q. You don't recall seeing any on the outside?

A. No.

Q. Did you park in a car near the shed?

A. Not too close. Close enough that we could see the shed.

Q. Close enough you could see? [128]

A. Yes.

Q. Were there lights on around town? Part of this occurred in daylight, didn't it?

A. The part that occurred in daylight I didn't see.

Q. You weren't there during the daylight?

A. No, I was busy elsewhere.

Q. You didn't come down until the evening hours?

A. I was in Sunnyside during the day.

Q. But not down watching the truck or anything? A. No.

Mr. Robinson: That's all.

Mr. Erickson: That's all.

(Whereupon, there being no further questions, the witness was excused.)

R. S. BRUCE,

called as a witness on behalf of the plaintiff, having been duly sworn, testified as follows:

Direct Examination

By Mr. Erickson:

Q. Your name is R. S. Bruce?

A. Right.

Q. Where do you live, Mr. Bruce?

A. I live in Ellensburg.

Q. What is your position?

A. I'm with the joint Federal-State inspection service, Horticultural Department.

Q. The State of Washington? [129]

A. Right.

Q. During August, 1948, were you at Sunnyside? A. I was.

Q. What were your duties there?

A. I was inspecting potatoes.

(Testimony of R. S. Bruce.)

Q. Well, directing your attention to August 23, were you in Sunnyside on that date?

A. I was.

Q. And did you observe the load of potatoes near the Herrett Trucking Company? A. I did.

Q. And what directed your attention to that load?

A. I was instructed by my immediate supervisor to keep the load under surveillance.

Q. When did you first see it?

A. It was the evening, the exact hour I don't know, sometime I would say between 6 and 7.

Q. It was still light? A. Yes, it was.

Q. Who was your immediate supervisor?

A. I wouldn't say for sure whether Mr. Carver or Mr. Klassen instructed me.

Q. And what did you observe?

A. In the evening all that I saw was just sitting at a distance of about a block or two from this truck and watching [130] it to see if it was moved.

Q. And how long did you watch it?

A. I was there until relieved by one of the other men; I would say for an hour and a half or two hours.

Q. And did you observe it again?

A. Yes.

Q. And when did you observe it again?

A. I was relieved to eat my dinner, and then I came back possibly at 9 or 9:30.

Q. And how long did you observe it then, or until what time did you observe it?

(Testimony of R. S. Bruce.)

A. That particular truck was still there when I left.

Q. And when did you leave?

A. There was another truck, a small truck, left, and Mr. Klassen I followed the small truck.

Q. You followed the small truck?

A. Right.

Q. Now, about what time did the small truck leave?

A. Sometime in the neighborhood of between 10 and 11, I would say.

Q. What was the license number of the small truck?

A. May I refer to my notes to be sure?

Q. Yes.           A. It was TKE 10170.

Q. And where did the small truck go? [131]

A. It proceeded south of town, past the Carnation Milk plant I would say for a distance of a mile and a half or two miles, and pulled into a farm lane, and the men on the truck started dumping potatoes over it looked to be a fence.

Q. Were the potatoes dumped, as far as you know, all of them?           A. Yes.

Q. Do you know what kind of potatoes these were?           A. No, I didn't see the potatoes.

Q. And did you find out subsequently where this place was that the potatoes were dumped?

A. Pardon me?

Q. Do you know where the potatoes were dumped, who owned the property or what feed lot it was?



(Testimony of R. S. Bruce.)

A. I have heard that it belonged to——

Q. Well, you can't tell what you heard. You can tell if you know, however.

A. I didn't ascertain it myself.

Q. Then what did you do?

A. After observing this small truck we came back and reported, I am sure, to Mr. Carver.

Q. And what time did you come back and report to Mr. Carver?

A. I would say sometime after 11.

Q. 11 o'clock, this was on the night of the 23rd of August?      A. Right. [132]

Q. Monday night?

A. I wouldn't say whether it was Monday night. I know it was the 23rd.

Q. Then what did you do?

A. After reporting to Mr. Carver and talking to him a few minutes, I went to the hotel with Mr. Klassen and prepared to go to bed, and it was possibly after midnight before I finally did go to bed; I sat there and talked to Mr. Klassen. I know it was after midnight. I was back outside of the hotel, just walked out on the sidewalk before I went to bed.

Q. Did you do any work on this case the next day?      A. Yes, I did.

Q. What did you do?

A. Starting at approximately 6 o'clock the next morning I observed a van parked on the Herrett Trucking Company parking lot at Sunnyside.

(Testimony of R. S. Bruce.)

Q. Do you know the license number of that van?

A. The van was—the tractor part of the van was TKE 12310, and the trailer part was TLE 1374.

Q. And where were these parked?

A. On the Herrett Trucking Company lot.

Q. And when did you first observe them?

A. A very few minutes after 6 a.m.

Q. Just go ahead and relate what happened, in your own words. [133]

A. The supervisor at Grandview called me by telephone and asked me to observe this truck. It was raining lightly, and I made periodic checks of say, possibly 20 minutes or half an hour; I would drive by to see that the truck had not been moved. I did that until noon.

Q. Then what happened after that?

A. Some of the other boys took over.

Q. Did you have anything more to do with this case after that, after noon on the 24th?

A. Well, at various times we naturally talked to Mr. Garrecht and Mr. Carver and Mr. Klassen, the other fellows that were watching this truck.

Q. Did you make any more observations yourself after the 24th at noon?

A. Not that I recollect, Mr. Erickson.

Q. Your activity in connection with the observation ceased, then, at noon on the 24th?

A. Yes. I talked to the boys that evening while

(Testimony of R. S. Bruce.)

they were watching the truck parked on the other side. I was working.

Q. You were working?

A. I was working, but at various times I had driven over and talked to the boys watching the truck. Mr. Carver was one of the men there at the time.

Q. Did you observe any loading in the afternoon?      A. I did not. [134]

Mr. Erickson: That's all.

### Cross-Examination

By Mr. Robinson:

Q. You say it was raining lightly on the morning of Tuesday, August 24?      A. It was.

Q. That was more of a mist, wasn't it, than any great downpour at that time?

A. It dampened the ground.

Q. You went out with Mr. Klassen the evening before, when the small farm truck was driven out and completely unloaded at this location that you've mentioned?      A. I did.

Q. Did you after that time come back by the Herrett Trucking Company plant?

A. I wouldn't say what route we took back to town.

Q. You don't recall stopping by the—you know where the Herrett Trucking Company office is, don't you?      A. I do.

Q. You don't recall coming by the Herrett Trucking Company plant and stopping there for any time at all?

(Testimony of R. S. Bruce.)

A. I wouldn't say I did. I don't know which route we took back to town. I know we came past the Carnation Company plant, but from there I don't know where we went.

Q. You didn't observe the defendant, then, drive his own car out away from the Herrett Trucking Company plant that [135] evening?

A. I did not.

Q. You say you saw some of the operations on Tuesday afternoon when you happened to be back from time to time talking to Mr. Carver and Mr. Garrecht and others?

A. I didn't see any other operation; all I saw was the truck still parked. That was my designated duty, to see that the truck had not been moved, and I naturally noticed it in the afternoon, that the truck was still in the vicinity.

Q. How late that afternoon did you stay in that vicinity?

A. That I couldn't say, because I was working in the warehouse. It was just at various times if I'd drive by for something and see one of the boys.

Q. Did you see it in the evening?

A. I saw it in the evening, yes.

Q. Was it parked near a shed or shack that evening?      A. It was.

Q. Did you see any operations then?

A. I didn't.

Mr. Robinson: That's all.

(Whereupon, there being no further questions, the witness was excused.)

JOSEPH V. CARUSO,

called as a witness on behalf of the plaintiff, having been duly sworn, testified as follows:

Direct Examination

By Mr. Erickson:

Q. State your name, please; what is your name?

A. Joe V. Caruso.

Q. And where do you reside, Mr. Caruso?

A. Portland, Oregon.

Q. And what is your business?

A. Wholesale fruit and produce business.

Q. What's your location in Portland?

A. 935 S. E. Belmont.

Q. And you deal in potatoes during the season?

A. We deal in potatoes and all commodities.

(Whereupon, purchase order was marked Plaintiff's Exhibit No. 15 for identification.)

(Whereupon, three tags were marked Plaintiff's Exhibit No. 16 for identification.)

Q. Mr. Caruso, state whether or not on August 25, 1948, you met a Homer Waller in Portland?      A. I did.

Q. Did you make any purchase from a Homer Waller?

A. I purchased one truck load of potatoes.

Q. I'll hand you plaintiff's identification 15 and ask you to state whether or not that's the purchase order?

A. That's the purchase order with my writing on it.

(Testimony of Joseph V. Caruso.)

Q. And that's your signature on the purchase order?      A. Yes.

Q. The total price was—the quantity was 323 sacks of No. 1 spuds, and the price \$2.10, the total price \$678.30? [137]

A. Yes, sir.

Q. The date was August 25, 1948?

A. Yes, sir.

Q. And it was purchased from the Hathaway Farms by Homer Waller, is that the way it was signed?      A. Yes, sir.

Q. Is that the official purchase order in your files?

A. That is for out-of-state purchases.

Mr. Erickson: I offer the purchase order.

Mr. Robinson: Mr. Waller signed this as "H. Waller"? Is that Mr. Waller's signature, the "H. Waller" in the lower left hand corner?

A. That's right.

Mr. Robinson: No objection; I haven't any objection to it.

The Court: Admitted.

(Whereupon, Plaintiff's Exhibit No. 15 for identification was admitted in evidence.)

[Printer's Note: Plaintiff's Exhibit No. 15 is set out in full at page 328 of this printed Record.]

Q. (By Mr. Erickson): What kind of sacks were these potatoes in?

A. They were in an irregular sack; it was not a branded sack.



(Testimony of Joseph V. Caruso.)

Q. Would you say there was any printing or labeling on the sacks when you saw them?

A. No, there was none whatsoever.

Q. Did you examine the potatoes to see what kind they were?           A. Yes, I did. [138]

Q. What kind were they, Mr. Caruso?

A. To my knowledge they would pass as U. S. 1.

Q. And they were White Rose potatoes?

A. White Rose.

Q. What directions did you give to Mr. Waller about the sacks having no grades on them?

A. When I seen the sacks were not labeled or graded, why, to protect our interest I wanted him to make out some kind of a certification that they would be U. S. 1 potatoes, and in case I got into any trouble with inspectors I would have someone to go back to.

Q. I'll hand you plaintiff's identification 16 and ask you what those are?

A. Those were the tags that we furnished him to put on the sacks, and he graded them U. S. No. 1, Hathaway Farms, Granger, Washington.

Q. He wrote those out and put one on each sack?

A. Yes, sir.

Mr. Erickson: I offer 16 in evidence.

Mr. Robinson: One tag similar to these in this identification was put on each bag, Mr. Caruso?

A. Yes.

Mr. Robinson: Let's see, there were about 323 bags, did you say?           A. Yes, sir. [139]

Mr. Robinson: No objection to these.

(Testimony of Joseph V. Caruso.)

The Court: They will be admitted.

(Whereupon, Plaintiff's Exhibit No. 16 for identification was admitted in evidence.)

(Whereupon, check, Caruso Produce, No. 3197 dated 8/25/48, amount \$678.30, was marked Plaintiff's Exhibit No. 17 for identification.)

Q. (By Mr. Erickson): I'll hand you plaintiff's identification 17, Mr. Caruso, and ask you what that is? A. That's one of our company checks.

Q. I'll ask you to state whether or not that is the check that's made payable for purchase order, Plaintiff's Exhibit 15, the memorandum of purchase?

A. That's the one, and that's the only purchase we ever made from them.

Q. That's \$678.30, that check?

A. Yes, sir.

Q. Has that check been cleared and the money paid? A. Yes, it has.

Q. It's made out to——

A. It's made out to Hathaway Farms.

Q. ——to Hathaway Farms.

Mr. Robinson: No objection.

Mr. Erickson: I'll offer 17.

The Court: Admitted. [140]

(Whereupon, Plaintiff's Exhibit No. 17 for identification was admitted in evidence.)

[Printer's Note: Plaintiff's Exhibit No. 17 is set out in full at page 329 of this printed Record.]

(Testimony of Joseph V. Caruso.)

Mr. Erickson: That's all, you may examine.

Cross-Examination

By Mr. Robinson:

Q. Mr. Caruso, you bought these potatoes, did you say, at \$2.10 a sack or hundred?

A. \$2.10 a hundred at Portland.

Q. Was that a fair price at that time at that place?

A. It was a fair price.

Q. You didn't beat the market down any in buying those potatoes, did you?

A. No, we didn't beat the market down.

Mr. Robinson: That's all.

(Whereupon, there being no further questions, the witness was excused.)

JAMES V. SPAULDING,

called as a witness on behalf of the plaintiff, having been duly sworn, testified as follows:

Direct Examination

By Mr. Erickson:

Q. Will you state your name, please?

A. My name is James Verl Francis Spaulding.

Q. And what is your business?

A. I'm a special agent with the Federal Bureau of Investigation.

Q. And during August, 1938—I mean 1948, and September, 1948, were you stationed at Yakima?

A. Yes, I was.

Q. Mr. Spaulding, state whether or not you were called to make some investigation in this case?

A. We received a complaint from the chief of

(Testimony of James V. Spaulding.)

police at Sunnyside, Washington, regarding a truck-load of potatoes which had been parked in the vicinity of the Herrett Trucking Company and which at that time he felt shouldn't have been there, and he believed that perhaps that since the program, or the price support program, was in effect, and in turn that these potatoes might be part of that particular crop——

The Court: I wouldn't go into too much detail on that. We want to know what you did.

A. All right. We received our original complaint from the chief of police at Sunnyside, Washington.

The Court: That answers the question.

Q. What did you do pursuant to that?

A. Well, upon the reception of the complaint, I was advised by my office to start an investigation and to find out what the particulars were regarding this particular load of potatoes which Chief Hill had brought to our attention.

Q. Did you make an investigation?

A. Yes, I did, sir.

Q. Who worked with you on the case?

A. For about two days I worked by myself, and at such time as [142] I felt that perhaps we might be getting to some rather pertinent information, I then asked Special Agent Middleton of the F.B.I. if he would assist me.

Q. During the two days did you interview the defendant Homer Waller——

A. I did.

Q. ——or rather, Melvin Waller?

A. Yes, I did.

(Testimony of James V. Spaulding.)

Q. When was the first interview you had with Melvin Waller?

A. It was about the 21st of September. I had gone down to the—no, excuse me; it was about the 16th of September that I first went to the Herrett Trucking Company, and at that time I asked if the owner or whoever was in charge of that business was available. I was told by Mr. Robinson, the secretary-treasurer of the company, that Homer Waller, who was the owner, wasn't available at that time.

Q. You mean Melvin Waller?

A. I mean Melvin Waller; excuse me; so I returned about the 21st of September, at which time I met Mr. Waller and asked him if it were possible for he and I to have an interview regarding the truck load of potatoes that had been parked adjacent to his trucking concern.

Q. And did you have the interview?

A. Yes, we had the interview.

Q. Who was present? [143]

A. I was by myself at that particular time.

Q. What was the conversation between you and Mr. Melvin Waller?

A. Well, I asked Mr. Waller just why this particular load of potatoes had been parked adjacent to his property, and he said that it was just brought there and parked awaiting a transferral out to a feed lot. It was rather a lengthy conversation, and at that particular time there weren't very many facts gotten which I believe is pertinent to the case at this moment, because I had, or I felt it necessary to familiarize myself through numerous interviews with members

(Testimony of James V. Spaulding.)

of the Horticultural Department here in Yakima, as well as with Mr. Garner, to know exactly what the government's position was in the price support program. Up to that time I didn't know——

Mr. Robinson: Your Honor, I think we'll have to restrict this witness.

The Court: Yes, I think that part will have to be stricken and the jury instructed to disregard it. We just want to know what you did and what the defendant said to you, if anything.

A. All right.

Q. This was on September 21? A. Yes.

Q. Did you have another interview with Melvin Waller?

A. Yes, I had another interview with Melvin Waller at which [144] time I was accompanied by Special Agent Middleton.

Q. And when was that?

A. That was about the 23rd of September.

Q. And where did that interview take place?

A. The interview started at Mr. Waller's place of business at the Herrett Trucking Company, and at that time I asked Mr. Waller if he would give us all the facts in the case as he knew them, and he requested us then that since he wasn't a lawyer, and he didn't know too much law, that he felt he should have some advice of a lawyer, so we suggested that we go up to his lawyer, who was Mr. Salvini at that time.

Q. That's Mr. Salvini here in court?

A. Yes.

Q. What took place then?



(Testimony of James V. Spaulding.)

A. In the presence of Mr. Salvini, Mr. Waller told us that he had had a verbal agreement with Mr. Williamson to utilize some of his trucks, inasmuch as Mr. Williamson's trucks were tied up in hauling potatoes from Mr. Williamson's farm into the inspection sheds in Sunnyside. He said that Mr. Williamson had also asked him what particular feed he was giving to his cattle, the 38 head of cattle or approximately 38 head of cattle that Mr. Waller owned, and I don't recall exactly what he said at that time about the feed, but he said that Mr. Williamson [145] had asked him if he had ever considered feeding them potatoes, so he said no, he hadn't, but when he found out that it was possible for him to buy potatoes under this program and therefore give them to his cattle, why, he became interested in the idea. He told us that part of the verbal agreement that existed between he and Mr. Williamson was that for the utilization of his trucks, or one of his trucks, he in turn could have some of Mr. Williamson's potatoes until such time as he could get potatoes here in Yakima under the program, so he said that one of his trucks had been sent up on his order to the I believe it was the Simmons sorting shed in Sunnyside where it was loaded, according to Mr. Waller, with about 200 or 250 sacks of potatoes.

At that time, or at that particular moment, we asked him if he knew why that load of potatoes had been covered over with a tarpaulin which they had, and he said no, he didn't know why, he thought it was certainly being overly careful on the part of the driver to do it, didn't know it was done, he certainly

(Testimony of James V. Spaulding.)

had not given any instructions to do that. Well, the truck, according to Mr. Waller, moved down to the post adjacent to the Herrett Trucking Company where it remained all that day. I asked him why at that time the truck was brought there and left to remain there, and he said well, he didn't know exactly, because there had [146] been an element of time in there now, and he couldn't recall, but he had other trucks tied up doing other work, and therefore this particular truck was just left to lie there for that day.

He said that about 11 o'clock on the night of August 23, to the best of his recollection, he, together with his brother Homer Waller, and I believe the other two men that he mentioned were a fellow by the name of Smith and a fellow by the name of Sanders, took the flat bed truck which had been parked alongside the Herrett Trucking Company, together with a van, out to Williamson's feed lot. There they set up two gasoline lanterns and they started the transferral of the potatoes from the flat bed truck to the van, and also dumping some of the same potatoes into the feed lot. I asked Mr. Waller approximately how many sacks had been dumped, and he said to the best of his recollection it was about 75 or 100, he didn't know exactly, and I asked him to the best of his recollection how many might have been placed into the van, and he thought that perhaps it might have been 100 or so, which would then establish or make a total of approximately 250 sacks which he thought was originally on that flat bed.

He said after the potatoes had been transferred

(Testimony of James V. Spaulding.)

into the van, they brought the van back to the Herrett Trucking Company and parked it in the parking lot where they keep [147] these larger trucks of theirs, for that particular night. The next day, which I believe was August 25——

Mr. Robinson: 24th.

A. ——or 24th, he said that one of his trucks again was sent to I believe it was Majonnier's sorting shed, where they picked up some more potatoes that belonged to Williamson, and brought them down and re-sacked them in the vicinity of the Herrett Trucking Company, I believe on the street—I don't know the name of the street, offhand, I don't think some of those streets down there have names, but the one which lies behind the parking lot, opposite the Herrett Trucking Company. He said there that the potatoes that they had were re-sacked and placed into the van, which made an approximate load, to the best that he could figure out, of about 16 tons. That afternoon he sent his brother Homer Waller to Portland to attempt to contact somebody so that this load of potatoes could be sold. He said then about midnight on the 24th the truck, the van, left with two drivers and it proceeded to Portland, Oregon, where it was met the following morning by Homer Waller and in turn Homer took the truck, with the two drivers, and they brought it down to Caruso Produce, and at that time the potatoes were sold, and I believe Mr. Waller said that he received a check in the vicinity of \$672.00, I don't recall the exact amount. [148]

Q. Did Melvin Waller say who the check was made out to?

(Testimony of James V. Spaulding.)

A. Yes, he said that the check had been made out to Hathaway Farms, Sunnyside, Washington.

Q. Did he say anything about the endorsement of the check?

A. Yes, he told me that the Hathaway Farms is owned by a man by the name of Kenneth Hathaway, who is his brother-in-law, and he had called his brother-in-law and told him he had received this check made out to the Hathaway Farms, and with his permission could he endorse it and have it cashed, and he received that permission from his brother-in-law, Kenneth Hathaway.

Q. Did he say he did cash the check, then?

A. Yes, he said he cashed the check.

Q. What did he say about the money he received from the check?

A. He said he put that into the funds which were maintained in the office of the Herrett Trucking Company, and I believe at that time I asked him if that wouldn't have caused an inquiry on the part of Robinson, his secretary-treasurer, as to how that money got in there, and he said no, he had full control of his business management, as he could very easily tell his employees what he wanted done, and if that substantial amount of money should suddenly be with the other cash, there would be no reason for alarm, it was just there because he put it there; the origins of it wouldn't be questioned. [149]

Q. Did he say anything about the books of the trucking company showing the movement of this truck?

A. Yes; when I first went down there speaking to

(Testimony of James V. Spaulding.)

Mr. Robinson I attempted to establish the fact if any substantial records were maintained on trucks that made trips out of the state or in the state, and I was informed by Mr. Robinson that it was a law of the State of Washington that you would have to maintain records. I requested him, having identified myself to him, to go through the records to see if we could possibly find any truck that had made trips from oh, I think I asked him August 20 to up around the 25th or 26th. He gladly produced them, and there was no record of any truck having made trips out of the State of Washington or even out of Sunnyside at that time. He informed me that they utilized several trucks around Sunnyside and Yakima, and there was no necessity to keep any record of those, only an hour or two, but on any sizeable trip that any truck has to make carrying any freight at all, they do have to maintain a record.

When I returned on my first interview with Mr. Waller, which as I say I think was about the 21st or 22nd of September, I again asked Mr. Waller if they did keep any record of that. He informed me that his duties were not centered around the maintenance of those records, inasmuch as he had too many other things to do. He told [150] me he was a passably good mechanic, and therefore he devoted most of his time in maintaining those trucks, he left the paper work up to Mr. Robinson, the secretary-treasurer, so again I asked Mr. Robinson to go through those records to see if they could find any record of any of those trucks having made any trips from August



(Testimony of James V. Spaulding.)

20 up to the 25th or 26th, and again the results were the same, there was no record.

I again asked Mr. Waller if he could account for that fact, and he said no, he couldn't. He wasn't too interested in it, inasmuch as the paper work didn't mean anything to him; if Robinson couldn't account for it he certainly couldn't. I asked if it was possible it was omitted for any reason; he said he didn't know. I think that's about all we said at that time about going through those records.

Q. Did you check the records to see whether they showed the receipt of any money for a load of potatoes sold to Caruso?

A. No, at that time I did not, sir. I just asked Mr. Waller if he had received any money from the transaction which had taken place with Caruso in Portland. He said yes, he had received a check in the amount of \$672.00 or something about that. He didn't know exactly, and I didn't know at the time.

Q. Did Melvin Waller say anything about transferring the [151] potatoes from branded sacks to plain sacks?

A. Yes, he said that, he told me, as well as his brother Homer had told me, that when he had gotten down to Portland to Caruso Brothers, that Mr. Caruso had questioned the origin of this particular load of potatoes, inasmuch——

Mr. Robinson: I don't believe that's responsive.

The Court: I'm afraid it isn't.

Mr. Erickson: Let me ask the question again.

The Court: He shouldn't testify to anything Homer Waller told him out of the presence of the defendant.



(Testimony of James V. Spaulding.)

A. He was in the presence at that time.

Q. Yes, was Homer Waller and the defendant Melvin Waller present?

A. Yes; Mr. Middleton and myself had gone down to re-interview Mr. Waller, and while we were there we asked him if it was possible to speak to Homer, and he said it was all right with him, and he asked permission if he could remain in the office with us, and that was granted, so in the interview which took place between Mr. Melvin Waller, Homer Waller, agent Middleton, and myself, we asked Homer just what happened when he got to Portland with this load of potatoes. He told us that Mr. Caruso had questioned the origin of these potatoes, inasmuch as they were loaded in unbranded sacks, and he through past experience had found that potatoes coming from the area had always been in [152] labeled sacks, and consequently would establish where those potatoes had come from, but after talking with Mr. Caruso for I don't recall how long, but he said they had dickered around for quite a while, and eventually Mr. Caruso had agreed to give \$42.00 a ton for these potatoes, believing that they had come from the Hathaway Farms in Sunnyside.

Q. Did Melvin Waller say anything to you about himself purchasing any potatoes from the Commodity Credit Corporation?

A. Yes, he said that after Mr. Williamson had discussed the possibility of he buying potatoes under this program as feed for his livestock, he had sent his brother Edward up here to Yakima to purchase I believe about 149 or 150 tons of these potatoes. He

(Testimony of James V. Spaulding.)

said that Edward had returned to Sunnyside and told him that he had handed him what looked like a very unauthoritative piece of paper, and he said to him, "Is that all you got?" and he said, "No, that's not all I got; that's all they gave me to take back here, but I signed a contract, which is a government contract," and he says, "It looks pretty legal," so Homer then said——

Mr. Robinson: Your Honor, this is a conversation, unquestionably, but I think it's outside the issue. They might talk about the weather. I'm sure the conversation occurred about the subject—— [153]

The Court: Well, it's hard to tell what materiality it has until I see where it's leading.

Mr. Erickson: Well, I'll withdraw the last part of the question, stop here, and permit cross-examination.

The Court: Well, I think it's time for recess now. Just a moment, I'll let the jury go out first before we recess.

(Whereupon, the following proceedings were had without the presence of the jury.)

The Court: I thought from the prior offer of one of these identifications, I believe, and from the testimony here that perhaps the government had in mind offering proof that the defendant subsequent to this transaction which is involved in the indictment purchased a large quantity or contracted to purchase a large quantity of potatoes from the Commodity Credit Corporation, and I thought that we'd better see what was proposed here and get some ruling on it

(Testimony of James V. Spaulding.)

in the absence of the jury, if that's what you propose to do. It's my understanding that similar transactions which bear upon the question of intent may be shown even though they're subsequent, if they're not too remote in time.

Mr. Erickson: Yes.

The Court: My idea is that if the government could show that this defendant a short time after this transaction contracted to buy a very large quantity of potatoes [154] and didn't have stock to feed them to, a fair inference would be that he intended to sell them on the market in Portland or elsewhere, and it would have a bearing on intent. Is it your position that would not be admissible under any circumstances?

Mr. Robinson: Yes, this length of time afterwards.

The Court: Well, what length of time is this?

Mr. Robinson: This is two days after the other transaction, the knowledge having been obtained that there was any claim by the government in the meantime, and no copy of the contract ever having been delivered to the defendant by that time.

The Court: Well, it certainly wouldn't have any probative value in showing that he had any knowledge of the terms under which these potatoes were sold to the government, but here you have the very important question of whether this defendant was acting honestly or had the intent to wrongfully take these potatoes, and in that connection I think sometimes subsequent conduct is admissible, if it isn't too remote in time, as bearing on intent.

Mr. Robinson: Well, it seems to me it would be

(Testimony of James V. Spaulding.)

only prejudicial here, if there were any evidence at all in this, I don't know what they're trying to lead up to, the contract signed, no copy delivered later on, signed by [155] a brother, and contracted, and paid, putting money down. That's all the government was interested in, he had the livestock.

The Court: Perhaps we'd better find out what the government proposes.

Mr. Erickson: It's my idea to seek the admission of this exhibit, Melvin Waller's contract to purchase potatoes, dated August 25, in order to show his intent. An important contention made by him will be his innocent motive and lack of intent to sell these potatoes. We wish to show that he purchased a very large quantity of potatoes, nearly half a million pounds, on a subsequent date, the 25th of August, which is the same day as the purchase order to Caruso was signed, it's the same day as the check was dated, the same day as the potatoes were taken to Portland; it's so close in point of time that it's almost part of the same transaction, and it certainly is admissible to show his motive, his scheme, his intent, and what he had in mind here at the time of taking this load to Portland. I realize the whole question is what intent the defendant had when he took this load to Portland. This other action is important to explain and illustrate his intent at that time, that was the purpose of it.

Mr. Robinson: Your Honor, counsel stated in his [156] opening statement that these were purchased, and they were purchased, there isn't any question about that, but our whole basis of the defense was

(Testimony of James V. Spaulding.)

that these were Williamson potatoes in the present action; these are potatoes that he had purchased himself. It's an entirely different matter.

The Court: Well, if the Court holds that these are Williamson potatoes, that ends the lawsuit.

Mr. Robinson: Well, that's our claim of what the defendant thought they were, because he's the fellow he was dealing with. Now we come to a transaction where the defendant is dealing with the government at a two day later time. No question they claim the intent is on Monday, not on Wednesday; true, the potatoes had to be transported overnight.

The Court: I can't base my ruling on admission of evidence on what you say your client is going to testify to, or your witnesses. There isn't anything in the record at the present time that would show any shadow of claim that the defendant relied on the permission of Mr. Williamson in taking these potatoes, because Williamson testified he didn't give him permission to sell them; he said to take them to the feed lot, so I have to assume on the basis of this offer there wasn't any authority from Williamson, and that being the case, if a man takes these feed potatoes, sells them without authority in Portland, [157] and the same day he sells them he buys a very large quantity for feed purposes himself, of course if he can show he had cattle enough to justify feeding them, that would indicate he got them for a legitimate purpose, but it seems to me it would have a bearing on intent.

Mr. Robinson: The testimony is he had 28 or 30 cattle. Williamson had 75 cattle, and he'd bought 500



(Testimony of James V. Spaulding.)  
tons, Williamson, bought 500 more tons.

The Court: What was this purchase?

Mr. Robinson: 149 tons.

Mr. Erickson: This purchase is for 4,100 hundred-weight; that's 410,000 pounds, or 205 ton, I believe.

The Court: 205 ton?

Mr. Erickson: If my mathematics are right.

Mr. Robinson: Well, this covers two shipments; this shows September 23 on it, your Honor, just as the other did.

Mr. Erickson: Well, it's dated August 25, and of course they can't all be taken the same day. It's 50 tons a day.

Mr. Robinson: No, but it was two transactions with the government. Mr. Chinn testified he didn't come out until a month later; he ordered 149 ton, there's no question about that, that's what he bought that day, a third of the amount or less than a third of the amount Williamson had [158] bought for the same number of cattle. That's just a coincidence.

The Court: I'm not arguing this now, but it's always been my understanding that while as a general rule evidence of other offenses cannot be shown to prove the offense charged, that where there are other transactions that show a general scheme and show an intent with which the act charged is done, that that may be shown even though it might involve other transactions and might even show other offenses. Of course, here we haven't any question of any other offense, it's just another similar transaction, and I don't believe it makes any difference as to the application of that rule whether the transaction that bears upon intent were immediately before or about the



(Testimony of James V. Spaulding.)

same time or a little after; the fact it's a little subsequent I don't believe of itself makes it inadmissible, if it's not too remote in time, and it seems to me this has some probative value bearing on intent, and I'll admit it and instruct the jury. Did you have something else?

Mr. Robinson: Yes, I did, your Honor. I don't know how long the case is going on, but I'm up against a tough proposition. Mr. Rossier, the Mayor of Sunnyside and justice of the peace, is one of our character witnesses, and a close friend of his, his funeral is being had this [159] afternoon at Goldendale.

The Court: Is he a character witness?

Mr. Robinson: Yes.

The Court: Do you have any objection to putting him on out of order?

Mr. Erickson: No, I have no objection.

The Court: Well, put him on right after the recess.

Mr. Robinson: All right.

Mr. Erickson: I have a couple more questions to ask.

The Court: I think we should finish the direct evidence first.

Mr. Erickson: So that the record may be straight, then, plaintiff's identification 12 and 13 are admitted in evidence?

The Court: I think that you had better offer them in the presence of the jury.

(Short recess.)

(Whereupon, the following proceedings were had within the presence of the jury.)

(Testimony of James V. Spaulding.)

Direct Examination—(Continued)

By Mr. Erickson:

Q. Mr. Spaulding, there's a question I'd like to ask you; did you have any conversation with Mr. Waller as to his knowledge of the potato program and the use of potatoes for stock feed? [160]

A. Yes; when we were at Mr. Salvini's office, we had asked him, after he had told us the story of what had happened to this load of potatoes, if he knew just where these potatoes came from. He said yes, they were Mr. Williamson's potatoes. We asked him if he knew that they were government property. He said well, he couldn't be sure of the fact of whether they were government property or not; he knew that Mr. Williamson was involved in the government with these potatoes; he knew that Mr. Williamson was working into the program, and I think as he explained, he didn't know the inner working or the mechanics of the whole operation, but he knew that Williamson was tied up in the government with this particular crop of potatoes that he was dealing in at that time.

Q. Did he give you any reason for signing the contract with the government on August 25 to purchase stock feed potatoes?

A. Yes, he said that due to the fact that Mr. Williamson had interested him in the fact of feeding potatoes to his livestock, that he in turn came up here, or had his brother Edward come up to Yakima and order these potatoes for him. I asked him also, in the presence of Agent Middleton, if this was the only load of potatoes that he ever intended to sell,

(Testimony of James V. Spaulding.)

and he said no, it looked like it might be a profitable business, and he would have sold more, but he [161] did say that when he became aware that he had done something wrong, then he felt that he should discontinue any practice of selling any more of these potatoes.

Q. That's all.

A. Now, I asked him what he thought was wrong, and he said well, the fact that Williamson had been tied up in the government, plus the fact his brother Edward had come back from Yakima and said he had signed a contract on it, all those things led him to the conclusion that he'd better not sell any more potatoes.

Mr. Erickson: You may examine.

The Court: You may retire from the stand. We want to put on another witness out of order. All right, you may call your witness out of order.

Mr. Robinson: Thank you. Mr. Salvini, my associate, will interrogate Mr. Rossier.

The Court: Very well.

Mr. Erickson: I wonder if counsel can approach the bench?

The Court: Yes.

(Whereupon, the following proceedings were had at the bar, out of the hearing of the jury.)

Mr. Erickson: Is it your idea that Melvin Waller will take the stand himself?

Mr. Robinson: Yes. [162]

Mr. Erickson: Well, now, this defendant has been convicted of a felony, and I want to show that, and

I don't want to take the chance of bringing up this previous conviction, it would be reversible error at this stage of the trial, and I want to ask this character witness, because he's just been off parole since 1938, from the penitentiary or reformatory, and I'm at a disadvantage in cross-examining him.

Mr. Robinson: You don't have any idea how long this case will last? He has to go to the funeral at 2 o'clock.

Mr. Erickson: I don't like to take the chance about asking him about a conviction at this stage of the trial.

The Court: No. The United States Attorney is entitled to know whether the defendant is going to take the stand or not.

Mr. Robinson: No, there's no secret about that, nor about the conviction, nor about Mr. Rossier's knowledge of it, but this funeral is very important to him.

The Court: When is the funeral?

Mr. Robinson: Two o'clock, at Goldendale.

The Court: Well, we won't finish this case today; there isn't any possibility of that, is there?

Mr. Erickson: I think we'll finish our case about that time, and then if he'd come up after that time—

Mr. Robinson: There isn't a chance of getting back this afternoon, if we could put him on in the morning.

The Court: Well, I don't believe we could finish this today.

Mr. Robinson: I don't think so. I intend to argue at some length.

The Court: We could call him tomorrow.

(Whereupon, the following proceedings were had within the presence and hearing of the jury.)

JAMES V. SPAULDING,

a witness for the plaintiff, resumed the stand and testified further as follows:

Cross-Examination

By Mr. Robinson:

Q. Mr. Spaulding, I believe you said that you first got into this case on the 16th of September, 1948, is that correct?

A. I believe that was the correct date; that was the date that I had received notice from my office to continue or start my investigation.

Q. And it wasn't until the 21st of September that you talked with Melvin Waller, then?

A. I believe that was the date, yes, sir.

Q. And at the time you talked to him there were present officer Middleton and Mr. Salvini and Homer Waller, is that right?

A. No; the first time I spoke to him alone.

Q. Oh, I see; you talked to him alone? [164]

A. Yes.

Q. With Melvin Waller alone?

A. With Melvin Waller alone, yes, sir.

Q. And after you talked with him awhile, he suggested you go up to Mr. Salvini's office?

A. No; at the end of that first day I had asked Melvin if he would consider the whole thing, think over what I had told him, because I did relate to him information that I had obtained during the course of my investigation, and he said that he



(Testimony of James V. Spaulding.)

wanted to cooperate in every way that he could, but that he would like to have a little time to think it over, and I said fine, I'll be back to see you tomorrow or the next day, I don't recall exactly what I said at that time, then the next day I had Agent Middleton with me, and then we talked to Melvin again, and as I say, when we asked him if he was willing to give us the complete story, he said that not knowing a lot about the law, and feeling we did, he felt he should have some legal advice. We said, "Would you like to get your lawyer?" and he said yes.

Q. That was after September 21, is that right?

A. Yes, it was.

Q. And did he tell you at that time, Mr. Spaulding, that this transaction of the potatoes was a personal transaction of his? [165]

A. He told me that it was a verbal agreement that existed between he and Williamson, because Williamson had requested he use some of his trucks to haul some of the potatoes that Williamson had bought from the government out to his feed lot.

Q. Yes, he said it was a verbal agreement for hauling between he and Williamson?

A. Yes.

Q. And that he had the interest in the Hathaway Farm potato crop, he told you that, didn't he?

A. Well, he said, I believe the story there was that his brother or brother-in-law, Ken Hathaway, had just recently or within the past few years become interested in farming, and wasn't too good at it, and at one time when he was first starting, why, he had asked Melvin to assist him financially, which he



(Testimony of James V. Spaulding.)

said he gladly did, and I guess the debt was still outstanding at the time that I was speaking to Melvin, because he said——

Q. Just answer my questions, Mr. Spaulding, whether he said—if he didn't say it, maybe we can arrive at what he did say, but he told you that he had a financial interest in the potato crop of the Hathaway Farms, isn't that correct?

A. No, he said that he had lent money to his brother-in-law to get started, and if his brother-in-law could in any way get the money back to him, or he could assist him in [166] getting it back to him, then he would gladly do it.

Q. He told you that he had an arrangement by which the crop of potatoes his brother-in-law was producing would be available to him?

A. No.

Q. You don't recall his making it?

The Court: He says he didn't make it. If you ask him if he doesn't recall, that's like asking, "Have you quit beating your wife". It isn't fair to say you just don't recall it, then.

Q. Melvin Waller told you, did he not, that the hauling of the potatoes involved to Portland was a personal transaction of his own?

A. Well, the hauling of the potatoes——

Q. Yes or no?

A. I can't answer it by just saying yes or no, sir.

The Court: Let's see, read the question.

(Whereupon, the reporter read the last previous question.)

(Testimony of James V. Spaulding.)

The Court: You mean personal as distinguished from the trucking company?

Q. Yes.

A. Oh—well, I can't just answer it, your Honor, by yes or no.

Q. Well, I'll ask it again, and see if we can't—I don't [167] know why you can't answer it, but did Melvin Waller explain to you the organization of the Herrett Trucking Company?

A. Yes, he said that he, his brother Homer and brother Edward owned the business and operated it together, and I believe also Robinson.

Q. Kenneth Robinson?

A. Yes, Kenneth Robinson, I believe; I don't know his first name, I'm not sure.

Q. And did he explain to you the acquaintance that he had with Charley Williamson?

A. Yes, he said that Charley Williamson and he had been friends, and that they were aware of one another's activities inasmuch as he knew Charley as a farmer, and Charley in turn knew him as a trucker, or an operator of a trucking concern.

Q. He told you that Ed Waller had come up to Yakima and contracted or signed a contract for a quantity of these potatoes, with the government?

A. Yes, upon his instructions he did.

Q. Did he tell you about the six or seven ton of potatoes that Williamson had given to him on Monday, August 23?

A. Yes, he said that Williamson felt that until such time as Melvin Waller could get these potatoes up here at the Yakima Horticultural Department,

(Testimony of James V. Spaulding.)

that he would let him [168] have some of his potatoes to start feeding to his cattle, until such time as he could get his own, and I think he also said that it was sort of a means of Williamson paying him at that immediate time for the utilization of his trucks.

Q. He told you that he knew nothing about any claim that these were government property until later on, after he had talked with his brother Ed, after Ed signed the contract, isn't that right?

A. Well, he said when we were in Mr. Salvini's office that he didn't know all the inner workings of this program, he knew that it was going on, and he knew that Mr. Williamson was involved in it, and he knew that the potatoes he was taking were part of the potatoes Mr. Williamson had contracted for with the government, because that was the reason he was taking them out to the feed lot, to accommodate Mr. Williamson in getting them out there, inasmuch as Williamson didn't have any trucks to get them out there himself, and then at that time——

The Court: I think you've answered the question. Just try to answer the questions as briefly as possible.

Mr. Robinson: Well, I think that's all, your Honor.

The Court: Do you have any further questions?

Mr. Erickson: No, I have no further questions.

(Whereupon, there being no further questions, the [169] witness was excused.)

## JAMES MIDDLETON,

called as a witness on behalf of the plaintiff, having been duly sworn, testified as follows:

## Direct Examination

By Mr. Erickson:

Q. Your name is James Middleton?

A. That's right.

Q. You're a special agent of the Federal Bureau of Investigation?      A. Yes, sir.

Q. During August and September, 1948, where were you stationed, Mr. Middleton?

A. I was attached to the Seattle office and assigned to the Yakima resident agency.

Q. You worked out of Yakima?

A. Yes, sir.

Q. When were you called on this potato case involving Melvin E. Waller?

A. I first became aware of it in September. I was called in on it on September 23, or in that reasonable proximity. I believe it was the 23rd of September.

Q. Who called you into the case?

A. Mr. Spaulding, he's another agent, he requested that I accompany him to Sunnyside to interview Mr. Waller.

Q. That was on September 23?      A. Yes, sir.

Q. Did you interview Mr. Waller at that time?

A. Yes, sir.

Q. And where did you interview him?

A. We first talked to him at his trucking concern, at the office, and then we proceeded to Mr. Salvini's office in Sunnyside.

(Testimony of James Middleton.)

Q. Who was there when you talked to him at the trucking firm?

A. Mr. Spaulding and myself and Mr. Waller.

Q. Was Mr. Garner there at that time?

A. Not on the 23rd of September.

Q. And then you went to Mr. Salvini's office?

A. Yes, sir.

Q. And who was present there?

A. Mr. Salvini, Mr. Waller, Mr. Spaulding, and myself.

Q. What was the conversation when you got up to Mr. Salvini's office? Just give it as nearly as you can.

A. Well, we talked to Mr. Waller, and he advised us that he had talked to Mr. Salvini the night before, and told us about the particulars of the questioned potatoes.

Q. Well, what was said, now?

A. Well, Mr. Waller went into the story, saying that he had obtained the—he had entered into an agreement with Mr. Williamson to haul potatoes for Mr. Williamson to Mr. Williamson's feed lot, and that Mr. Williamson had also interested him in feeding a few of the potatoes himself; [171] that up to this time he had not fed any, and during one of the hauling trips he took the load of potatoes out to Mr. Williamson's feed lot to dump them, and he stated that while proceeding to dump them there, he entered upon the idea that these were pretty nice potatoes, that if he could put them on the open market he might gain a pretty good



(Testimony of James Middleton.)

price for them, and he dumped approximately at that time, he made a statement that he thought there was around 200 or 250 hundred pound sacks of potatoes on the truck load, and he told us that he thought, or as best as he could calculate he helped dump approximately 100 of the hundred pound bags, and transferred the rest of the potatoes into other sacks, his own sacks, so that Mr. Williamson would have his sacks back, and came back into Sunnyside and parked the potatoes on the truck, and left them there, approximately a half a truck load, and the next day he completed the truck load of potatoes from more than he was hauling for Mr. Williamson, and then that night the truck was driven by two of his drivers to Portland, Oregon, where they were sold to Caruso Brothers.

Prior to this time he had instructed his brother Homer to go to Portland and try to find an outlet for the potatoes, and he sent the truck down to Portland, Oregon, Homer met the truck, and they delivered the potatoes to Caruso Brothers. It was then that the truck returned back. [172] I wouldn't say the truck returned back, I don't know about that, but Homer returned back with the check for the potatoes made out to Hathaway Farms, who Mr. Waller explained was his brother-in-law, and Mr. Waller also explained that while the truck was down at Portland, or while Homer was away, he had his other brother come to Yakima and see about himself buying some more potatoes, which he said that his brother did. We asked Mr. Waller



(Testimony of James Middleton.)

then if he had any idea whether or not he was going to feed the potatoes that he was trying to enter into agreement to buy, or whether he had an idea to market those also, and Mr. Waller stated that he thought it was a pretty good deal marketing these nice potatoes, and that he intended to market them also, but when his brother Ed Waller came back to Sunnyside he said that he had signed a pretty official paper, and he thought maybe he shouldn't do that; and we asked Mr. Waller for a signed statement to the effect, and Mr. Salvini advised against it, and that was about the—terminated the interview.

Q. Did Melvin Waller state whether or not he received the money from that check for \$678.30 payable to the Hathaway Farms?

A. Yes, sir, he said that Homer returned, and he received the check made out to Hathaway Farms.

Q. And did he state whether or not the money was deposited in [173] the books of the Herrett Trucking Company?

A. I don't believe he said it in those words. He said that he took the check to Grandview, Washington, where they had their banking account, and that he telephonically called his brother-in-law, Mr. Hathaway, and requested Mr. Hathaway's permission to sign the check and put it in the trucking firm, which he said he did.

Q. Did he state anything about his knowledge of Williamson's agreement with the government?

A. He stated that he didn't know they were

(Testimony of James Middleton.)

government potatoes, however, he knew that the potatoes—he was hauling them for Mr. Williamson, and that he had some idea that Mr. Williamson was in some way connected with the government in the potatoes, but he did not say that he knew they were government potatoes.

Mr. Erickson: That's all for this witness, but I will offer now plaintiff's identifications 12 and 13, the Waller contract.

The Court: Let me see them, please. They will be admitted.

(Whereupon, plaintiff's Exhibits Nos. 12 and 13 for identification were admitted in evidence.)

[Printer's Note: Plaintiff's Exhibit No. 12 is set out in full at page 325 of this printed Record.]

[Printer's Note: Plaintiff's Exhibit No. 13 is set out in full at page 327 of this printed Record.]

### Cross-Examination

By Mr. Robinson:

Q. Mr. Middleton, Mr. Waller told you, did he not, that his relationship with Mr. Williamson was a rather close friendly [174] relationship?

A. Yes, sir.

Q. And that the matter of hauling these potatoes for Williamson was pretty much to oblige Williamson, whose trucks were tied up in hauling his own potatoes in?

A. Yes, sir, he said it was purely a verbal

(Testimony of James Middleton.)

agreement between the two, that they were somewhat friendly.

Q. Well, he didn't say they were somewhat friendly, did he?

A. Well, he said they were friendly.

Q. They were friendly? A. Yes, sir.

Q. With reference to the Hathaway potatoes, Melvin Waller told you and Mr. Spaulding that he and Hathaway had an arrangement to market Hathaway's potatoes jointly, didn't he?

A. He told us, I believe the figure was close to \$300.00 he had loaned Mr. Hathaway, because Mr. Hathaway's circumstances were such that he requested to borrow some money, and that he loaned Mr. Hathaway this \$300.00 with the understanding that he be paid back when his potatoes were marketed, and his original intention was to take Mr. Williamson's potatoes and replace them with Mr. Hathaway's potatoes, and that way he would obtain a better price for Mr. Hathaway's potatoes, because his were not quite as good as the ones that he was hauling for Mr. Williamson.

Q. About how long were you and Spaulding and Salvini and Waller [175] together when you had this conversation?

A. I couldn't be sure, but it was approximately an hour and a half, and I believe it was directly before lunch, that's the way I recall it.

Q. You had lunch before it was over. Melvin Waller also stated, did he not, Mr. Middletown, that Williamson had told him that he, Waller,

(Testimony of James Middleton.)

could haul these potatoes either to Waller's place or Williamson's place?

A. Mr. Waller told us that Mr. Williamson suggested that he take some potatoes and feed to his own, Mr. Waller's, livestock, that they were a good feed and they were cheap feed.

Q. Waller answered all your questions that you and Mr. Spaulding had, didn't he?

A. Yes, sir.

Q. He told you to clarify it, that it was Ed Waller, his brother, who went up and contracted with the government to purchase some additional feed potatoes, on Wednesday, August 25?

A. I didn't catch the first part of it.

Q. He told you that it was his brother, Ed Waller, that went up to Yakima and contracted for some additional potatoes?

A. That's right, I believe.

Q. It's your recollection he told you that it wasn't himself that came up? [176]

A. He told us it wasn't himself, yes.

Q. I see. Did I understand your testimony, Mr. Middletown, that he told you he didn't know anything about these being government potatoes until his brother talked to him after he had got back from Yakima, and said he'd signed an official looking document that looked like it might mean something, is that right?

A. I believe he said that; he said he didn't know the potatoes were property of the government, that he knew Mr. Williamson had some kind

(Testimony of James Middleton.)

of a deal with the government, but he didn't know the mechanics of it, and he didn't know until his brother came back from Yakima that the contract said they were government potatoes.

Q. He didn't say they were government potatoes; I believe your testimony was that the brother said he signed a rather official looking document?

A. That was my testimony.

Mr. Robinson: That's all.

(Thereupon, there being no further questions, the witness was excused.)

(Whereupon, the Court took a recess in this cause until 1:30 o'clock p.m.)

(All parties present as before, and the trial was resumed.) [177]

WILLIAM G. H. GARNER,

called as a witness on behalf of the plaintiff, having been duly sworn, testified as follows:

Direct Examination

By Mr. Erickson:

Q. Your name is William G. H. Garner?

A. That is right.

Q. And what is your business?

A. I'm a special agent with the United States Department of Agriculture.

Q. And as such what are your duties in regard to investigations?

A. Well, I am required and assigned at various times to investigate the operation of the various programs administered by the department.

(Testimony of William G. H. Garner.)

Q. Of Agriculture? A. Of Agriculture.

Q. Directing your attention to the case of Melvin Waller, did you make an investigation in that case?

A. I did.

Q. When were you called to make an investigation in that case?

A. I was called about the 25th of August.

Q. And what day did you come to the Yakima valley for the purpose of pursuing that investigation?

A. August 27, I arrived here, 1948.

Q. And what did you do when you arrived here, briefly?

A. Well, I first of all contacted Mr. Claus Peters, who is [178] the chairman of the Washington State P.M.A. committee, and Jim Wright, who is a committee man, and conferred with them about the request which Mr. Peters had made to my headquarters in San Francisco.

Q. Now, what happened next?

A. I next conferred with Mr. Chinn, and later with Mr. Carver.

Q. And then what happened?

A. Well, pursuant to that, I took a statement from Mr. Carver and then we began to observe the operations of the Herrett Trucking Company.

Q. When did you first investigate the operations of the Herrett Trucking Company?

A. We started to investigate their operations a day after my arrival and after talking to Mr. Carver, which would be August 28.



(Testimony of William G. H. Garner.)

Q. What investigation did you make?

A. Well, we——

Q. You say “we.” Who do you mean by “we”?

A. I mean myself with the help of Mr. Carver and his assistants, his inspectors. We observed their operations, the movements of potatoes from the various potato sorting sheds in the Sunnyside area, to and from the Herrett Trucking Company in Sunnyside.

Q. Did you make an investigation as to the stock food potatoes sold by the Commodity Credit Corporation to [179] Williamson, Charles F. Williamson?

A. Yes, we did.

Q. When did you make that inquiry?

A. Well, most of these movements of the potatoes were with the Williamson potatoes, which were being moved at that time, then——

Q. Pardon me; at the investigation at the Herrett Trucking Company did you make an investigation of the stock food potatoes sold to Mr. Williamson and reportedly hauled by Melvin Waller’s truck to Portland, Oregon?

A. I did. My first——

Q. Go ahead.

A. ——my first contact with the Herrett Trucking Company was on September 13, when I examined their records, and at that time examined their records in their office in Sunnyside, and at that time also talked with Mr. Melvin Waller and with Mr. Robinson, the secretary-treasurer of the company.

(Testimony of William G. H. Garner.)

Q. What was the purpose of your investigation of the books of the Herrett Trucking Company on the 13th of September?

A. The purpose of the examination was to determine whether or not the books would disclose any movements of potatoes to Portland, as had been reported to me, on or about the—movements alleged to have taken place on or about August 23.

Q. Did the books disclose such movement? [180]

A. They did not.

Q. What did Melvin Waller say about the failure of the books to disclose that movement, if anything?

A. Well, I did not at that time disclose to Mr. Waller my real purpose; in other words, I did not bring up with him the specific subject of this particular movement. That was not discussed at that time.

Q. What did you do next in this investigation, Mr. Waller?

A. I, together with Mr. Carver and his inspectors, continued to observe the operations, and then I was later contacted by a Mr. Spaulding of the F.B.I.

Q. And what did you and Mr. Spaulding do then?

A. On September 27, 1948, Mr. Spaulding, Mr. Middletown, and myself proceeded to the Herrett Trucking Company place of business in Sunnyside, and we interviewed Mr. Melvin Waller, and later Mr. Homer Waller.

(Testimony of William G. H. Garner.)

Mr. Robinson: What date was that?

A. September 27th.

Q. Were there any conversations that took place with Melvin Waller at the office of the Herrett Trucking Company on September 27?

A. Yes. At that time we discussed with Mr. Melvin Waller the entire transactions which had been reported with respect to the movement of Williamson's stock feed potatoes from Sunnyside into Portland. [181]

Q. And did you later retire to some other place, or did you carry on the conversation in the office?

A. No, we carried on the entire conversation in the office.

Q. Repeat what was said and who said it, as near as you can, the substance of those conversations on the 27th of September.

A. Well, Mr. Waller was first of all asked whether or not he had on August 23 caused a load of Williamson's stock feed potatoes to be taken out to the Williamson stock feed lot and there transferred to a covered truck which we knew to have been taken out at the same time. Mr. Waller advised that he had caused these potatoes to be taken out there at that time, and that he had also caused this covered truck to be taken out, and that he, his brother Homer, and two other employees, one by the name of Sanders, the other by the name of Smith, had gone along, and that they had transferred this load of potatoes, U. S. No. 1, from the flat bed into the covered truck,

(Testimony of William G. H. Garner.)

with the exception of he thought about 100 sacks and about 100 sacks he stated he believed had been dumped in the feed lot.

He further advised that the potatoes at that time, or most of them, were transferred from the branded sacks in which they had been sacked, to plain wheat sacks which he himself had caused to be taken out at the time from his place of business in Sunnyside. He further stated that [182] after this transaction had taken place, this transferring—just to go back, he advised that lights had been set up out there on the lot at this time, and this happened around 12 o'clock at night when the truck left Sunnyside.

He advised further that the truck had then been brought back into Sunnyside and had been parked in the immediate vicinity of his place of business. He advised us further that the next day he had caused one of his trucks, the Herrett Trucking Company trucks, to go to another potato shed, Majonnier's, and pick up another load of U. S. No. 1 stock feed potatoes which he knew to be Williamson's stock feed potatoes, and that that truck had then been driven down to his place of business where a number of sacks had been transferred from that truck to the covered truck, and that also at that time some of the potatoes had been transferred from the branded sacks into the plain wheat sacks in this shed, in the shed which he described as being located right across from his place of business.

(Testimony of William G. H. Garner.)

He advised that he had filled out the load in the covered truck to the point where he had a little over 16 tons, or 323 sacks, and that he had then on the evening of the 25th, or rather in the early morning of the 25th, around between 12 and 1 o'clock, he had caused that truck to be driven into Portland, and that that same day, or [183] rather on the 24th, he had sent his brother Homer Waller into Portland for the express purpose of making arrangements to sell this load of potatoes. He stated further, advised further, that his brother Homer had been able to sell these potatoes to the Caruso Produce Company in Portland for a price of \$2.10 a hundredweight, and that his brother had obtained from the Caruso Produce Company a check in payment in the amount of \$678.30 which his brother had brought back to Sunnyside and given to him, and that he in turn had taken that check to the Sunnyside bank and had obtained the money for the check.

Q. Did he make any statement about whether or not the books of the company reflected the receipt of this check?

A. He advised that they did not reflect the receipt of the check or anything whatsoever to do with the transaction.

Q. Did he advise you that the books of the Herrett Trucking Company reflected the movement of this truck to Portland?

A. No, he stated that no record had been made on the books of the Herrett Trucking Company



(Testimony of William G. H. Garner.)

with respect to the movement of this truckload.

Q. Did you mention to Mr. Waller the fact as to whether or not he had signed a contract on August 25 for the purchase of potatoes from the Commodity Credit Corporation?

A. Yes, that was brought up. I knew that such a contract had been executed, having checked the records, Mr. John [184] Chinn's records. He advised that he himself had not signed that contract for the purchase of stock feed. He said that he had sent his brother Ed up to Mr. Chinn's office, together with a certified check payable to the Treasurer of the United States, or a money order, I'm not sure which, but it was payable to the government, payable to the Treasurer, and that his brother Ed had signed to take delivery of 149 tons of stock feed potatoes at the rate of \$2.00 a ton, and signed his name to it, that is, Melvin E. Waller.

Q. Did he make any statement of what his purpose and intent was in signing this contract with the Commodity Credit Corporation for these potatoes?

A. He stated that at the time that he made this movement, that he caused this truck load of potatoes to go to Portland, it looked like a pretty good way of making money, and that he had in mind the intention of making some additional shipments, but that after his brother came back and explained to him that he had had to sign a contract which appeared to be quite important, he had decided that it was not such a good idea.



(Testimony of William G. H. Garner.)

Q. Now, did he make any statement to you about his knowledge of the Williamson potatoes being government potatoes? If so, what did he say?

A. He stated that he knew that these potatoes which he had [185] caused to be picked up, the two loads on the 23rd and the 24th at the Simmons shed and the Majonnier shed, that he knew that they were stock feed potatoes, that he knew that Williamson was getting them from the government as stock feed potatoes under the price support program. However, he stated further that he did not understand all the mechanics of the program, but that he knew these potatoes were in some way mixed up with the government, and that the government had an interest in them.

Mr. Erickson: That's all, you may inquire.

### Cross-Examination

By Mr. Robinson:

Q. You've heard Mr. Middletown's testimony, haven't you?           A. I have, sir.

Q. Mr. Middleton and Mr. Spaulding were present at the time this conversation occurred?

A. They were.

Q. Mr. Waller told you at the time of this conversation that the handling of these potatoes was a personal transaction involving him, wasn't it, and not the Herrett Trucking Company?

A. I have no recollection of him making any such statement as that; I don't think he did.

Q. Told you that he'd paid the drivers himself, didn't he?

(Testimony of William G. H. Garner.)

A. No, I have no recollection of him saying that.

Q. He told you about his friendship with Williamson, and their [186] relations?

A. He mentioned the fact that he knew Charley Williamson, and that was all; that he was a friend of his, yes.

Q. Told you that he knew that Charley Williamson had no objection, didn't he?

A. Objection to what?

Q. To his using any of these potatoes that he was hauling for Charley Williamson?

A. No, that was discussed: he didn't say anything like that. He definitely stated that he knew these potatoes were supposed to go to Williamson's feed lot.

Q. He also told you that when Homer went to Portland he had other business down there, too, didn't he?

A. I don't think so; I don't remember that.

Q. The first contact you had with the defendant and Herrett Trucking Company was on September 13, is that correct?

A. That is correct, September 13, yes.

Q. What was the purpose that you stated to the personnel there, the reason that you called at the office?

A. The reason that I gave was that we were checking up on the operations of the 1948 potato price support program, and I wished to see what

(Testimony of William G. H. Garner.)

movements of potatoes had been made by the Herrett Trucking Company.

Q. They opened up their books, showed you everything they had, didn't they? [187]

A. Yes, they were very cooperative.

Q. You didn't ask them at that time anything about the particular shipment which you had in mind, did you?

A. No. At that same time we were continuing our investigation to determine whether this was continuing.

Q. Just answer the question.

A. No, I did not.

Q. Thank you. Mel Waller told you when you had your conversation with him on September 27, 1948, did he not, that he knew they were Williamson potatoes at that time?

A. That is correct.

Q. But he told you further that he didn't know the government claimed any ownership to them, didn't he?

A. He stated that he knew the government was mixed up with them some way, and had some interest in them.

Q. He didn't at any time tell you that he knew that the government claimed to own these potatoes at the time that he took them, did he?

A. He did not; not in those words.

Mr. Robinson: That' all.

Mr. Erickson: That's all.

(Whereupon, there being no further questions, the witness was excused.)

Mr. Erickson: The government rests.

The Court: The jury will retire. [188]

(Whereupon, the following proceedings were had without the presence of the jury.)

(Whereupon, Mr. Robinson made a motion on behalf of the defendant for judgment of acquittal.)

(Whereupon, Mr. Robinson presented argument in support of the defendant's motion for judgment of acquittal.)

(Whereupon, the Court delivered its ruling on defendant's motion for judgment of acquittal, as follows:)

The Court: In construing the language of this statute I think the Court should regard not only the immediate section here, its language, but also the whole Act of which it is a part; the act which sets up and provides for the activities of the Commodity Credit Corporation provides for the dealing with the problem of agricultural surplus. I think that can be done even in the case of a criminal or penal statute, although they are under the well known rules strictly construed.

In the first place this statute obviously is not the conventional larceny statute, although it is headed larceny and conversion of property, and it contemplates punishment of interference with the corporation's interest in property, which is ob-

viously much less than the whole ownership as ordinarily contemplated. It provides that whoever shall willfully conceal, remove, dispose of any [189] property owned or held by or mortgaged or pledged to the corporation--while that is not involved here, I think the Court can take into consideration that in a proper case the penalty provision of this section could be applied to property merely held by the corporation in which it had no other interest except possession; it could be applied to property mortgaged to the corporation; it could be applied to property pledged to the corporation, and with reference to the ownership, I think that we might have a very different situation here if we had the conventional sale and purchase transaction where there was a provision such as is present here of a reservation of title in the seller, but here again I think we have to regard the whole program and its purpose and effect.

It appears from the evidence here that in this instance the Commodity Credit Corporation, which is an agency of the government acting under the Department of Agriculture, of course was buying these potatoes in order to hold up the price, and they bought them at the pegged price of two dollars and something a sack, a hundredweight, and then they turned around, and regardless of the terms of this transaction which is evidenced by exhibit 4, they call it a sale, but who would say that turning potatoes back to the grower at 10 cents a hundredweight, in the sacks, is a sales transaction in the ordinary construction [190] of the term? I think



the Court can take judicial notice that new sacks cost more than 10 cents, and regardless of what it may be called, it is in the interest of the whole program, they're permitting a nominal buyer to take this government property and use it for one purpose only, that is, to feed livestock.

The government could have if they had wanted to, dumped them, burned them, destroyed them, but they thought it was in the public interest to use them as feed, but I think looking at this logically by its four corners, it may be regarded as permission of the government to Mr. Williamson to use these potatoes for the purpose of feeding his livestock, and they remained government property until he had used them for that purpose, and this language of Form 111, the title shall not pass, there isn't a reservation of title; it's a provision that it shall not pass until the potatoes are delivered or fed to the livestock, and where they're turned over at the nominal sum of 10 cents a hundredweight, these No. 1 U. S. potatoes, worth on the market over \$2.00 a sack, and they're turned over at 10 cents a hundredweight, I don't think you can call this or regard it as a conventional transaction of sale and purchase to which the authorities cited by counsel would properly apply, and I think under those circumstances that it might well be said that the government continued [191] to own these potatoes within the meaning of the controlling section here until they were used for the purpose for which they were delivered to Mr. Williamson.

The government wasn't selling potatoes for 10



cents a sack; it was letting somebody use them at that nominal figure for a purpose which was in line with the government's agricultural program.

Now, I confess that in view of the wording of this section and the transaction here as set up by these documents, the effect of it is not by any means free from doubt; it is a close question, and it's one on which something can be said, or much can be said, on both sides. I'm aware of the logic and force of Mr. Robinson's argument. I think it all depends upon how you look at this transaction, and whether we're permitted to take the broad view of it that I have suggested here in a criminal prosecution is, to say the least, doubtful, but I think in view of the situation where I have a jury waiting and the case on trial, I think I prefer to reserve my ruling on this; I'll deny it at the present time, and when it's renewed at the close of all the testimony I will, unless persuaded differently at that time, will reserve it until after the jury has returned its verdict, and submit the case to the jury, but for the present the motion for judgment of acquittal will be denied. Are you ready to [192] proceed, then, Mr. Robinson?

Mr. Robinson: Yes, your Honor.

(Whereupon, the following proceedings were had within the presence of the jury.)

CHARLES F. WILLIAMSON,

recalled as a witness on behalf of the defendant, having been duly sworn, testified as follows:

(Testimony of Charles F. Williamson.)

Direct Examination

By Mr. Robinson:

Q. Mr. Williamson, I think you said you live at Sunnyside?      A. Yes, sir.

Q. And your occupation is a farmer?

A. Yes, sir.

Q. How many acres do you farm, Charley?

A. 800, me and my two boys.

Q. Is that all cultivated land, or is that range?

A. No, it's some irrigated pasture land, and farm land.

Q. Do you know Melvin Waller?

A. Yes, sir.

Q. How long have you know him, Charley?

A. About two years.

Q. Are you neighbors?

A. Yes, sir; live right across the railroad track from one another.

Q. Yes. Directing your attention to Sunday, August 22, did you have a conversation with Melvin Waller on that day?      A. Yes, sir. [193]

Q. Did you give him some instructions with regard to hauling some potatoes?      A. Yes, sir.

Q. Did you have a conversation with regard to whether he should haul some for himself?

A. Yes, sir, I told him to haul some out for me and some for himself. He had a bunch of cattle, and I did. I said take some for himself, and some for me. He only had a small bunch of cattle, and I get most of the spuds anyway.

Q. You said you're neighbors?

(Testimony of Charles F. Williamson.)

A. Yes, and hes' got his shop in Sunnyside right between our two ranches, we go right by the shop to go up to the Roza ranch; I stop in to get stuff fixed, on Sundays, when they ain't open, and if I don't stop, they'll stop me; I just can't seem to get by there.

Mr. Erickson: I move those remarks be stricken.

The Court: Yes, they're not responsive.

Q. Are you friends, or just acquaintances?

A. We're friends; we neighbor back and forth—

The Court: You've answered the question now.

Q. What is the basis for your acquaintance?  
What transactions have you had back and forth?

Mr. Erickson: To which I object as immaterial to the issues in this case.

The Court: Well, I'll permit him to answer this.

A. He borrows my equipment, and we exchange equipment back and forth; I get his trucks, and he gets my tractors, and then I get tires from him there at wholesale, and I sell him hay, and he helps me haul, and I help him haul, and I've got a big tarpaulin of his now, and anything I've got, he's always welcome to it, because I know he'll make it right. I go and get stuff from him.

Q. By reason of your friendship could Mel Wal-  
ler possibly steal anything from you?

A. No, sir.

Mr. Erickson: Object to that.

The Court: Don't answer the questions until they're ruled on. I'll sustain an objection to that, and order that it be stricken from the record and

(Testimony of Charles F. Williamson.)

the jury instructed to disregard it. That's a conclusion of the witness, and not proper.

Q. Charley, during the period of time that you've known Mel Waller have you had occasion to meet other people who also knew him? A. Yes, sir.

Q. During that time have you heard other persons speak about him? A. Yes, sir.

Q. Do you recall ever having heard anything said about Melvin Waller that reflected on his honesty and truthfulness? [195]

The Court: Just a moment; that's clearly not the way to present character evidence; you know that. I'll sustain an objection to that. If you want to ask him about his reputation, that's all right; is that what you intended to do?

Mr. Robinson: My understanding is, asking if he knows the general reputation, and whether it's good or bad, if he knows about it, that he can also testify that he has never heard anything to the contrary.

The Court: I've ruled on that, Mr. Robinson. I don't think that's the proper way to examine a character witness.

Q. Are you familiar with the general reputation of Melvin Waller as you've observed it in your community as to his honesty? A. Yes, sir.

Q. What would you say is the general reputation of Melvin Waller as to his honesty?

A. It's good.

Mr. Robinson: That's all.

(Testimony of Charles F. Williamson.)

Cross-Examination

By Mr. Erickson:

Q. How long have you lived in that community?  
How long have you lived there?

A. I've been living there steady for two years,  
in Sunnyside. I bought there about four years ago.

Q. Have you heard Melvin Waller's reputation  
for honesty and integrity discussed?

A. Yes, sir, I've heard different people talk  
about it.

Mr. Erickson: I will desire to retain Mr. Wil-  
liamson in the Court. I wish to question him further  
on some phases of his character testimony later, but  
I don't feel free to ask any questions now.

The Court: You'll have that privilege.

Mr. Robinson: No objection.

The Court: You'll have to remain in attendance  
until you're excused; you'll have to wait outside.

(Whereupon, there being no further ques-  
tions at this time, the witness was temporarily  
excused.)

MELVIN E. WALLER,

the defendant, called as a witness in his own behalf,  
being first duly sworn, testified as follows:

Direct Examination

By Mr. Robinson:

Q. Your name is Melvin E. Waller?

A. Yes, sir.

Q. You're the defendant in this action?

(Testimony of Melvin E. Waller.)

A. Yes, sir.

Q. Where do you reside? A. Sunnyside.

Q. How long have you resided there now?

A. Since December, 1945. [197]

Q. Where were you before that?

A. For four years prior to that I was in the service, in the Army.

Q. Were you commissioned while you were in the Army? A. Yes, sir.

Q. How long were you overseas in the Pacific Theater, Mel?

A. It's difficult, I'd have trouble remembering that, but I'm sure it was 44 months.

Q. Are you married? A. Yes, sir.

Q. Have you any children? A. One child.

Q. What is your occupation?

A. I own stock in the Herrett Trucking Company, a corporation; I'm the president of that organization.

Q. Who are the other officers in the corporation, Mel?

A. I have a brother Homer, I have a brother Edwin, and Kenneth Robinson.

Q. Where is the location of the business?

A. It's located on the main street of Sunnyside, generally referred to in Sunnyside as 6th and Grant.

Q. What is the main street of Sunnyside going north and south? A. 6th street.

Q. How far are you from the main intersection in Sunnyside? A. Two blocks. [198]



(Testimony of Melvin E. Waller.)

Q. Do you know how large the population of Sunnyside is?

A. I don't know exactly; about five thousand.

Q. Generally, what property does the Herrett Trucking Company utilize in its operation?

A. We lease a corner lot on 6th and Grant, the northeast corner. We lease a lot across 6th street from that, it would be the northwest corner. and then we have purchased a piece of property adjoining that piece of property on the corner of Grant that we lease, that's on 5th and Grant.

Q. Does that last named property have a shack on it, kind of a house?

A. Yes, it's a small place, formerly occupied by a saddle manufacturer.

Q. Now, in what kind of activities was the Herrett Trucking Company engaged in August, 1948?

A. We moved many commodities; we're transportation people, short and long distance, agricultural commodities, cement, lumber, just general hauling, inter and intra state.

Q. Is that time of the year a busy time or a slack time?

A. It's quite a busy time, it's a very busy time.

Q. What hours of work were involved during that period last summer?

A. Well, the trucking business in that season is a 24-hour operation.

Q. Are there any regular hours of work for you or any of [199] your employees?

A. No, sir.

(Testimony of Melvin E. Waller.)

Q. You say that you're the president of the company?      A. Yes, sir, that's right.

Q. There are three others that have owned the corporation with you?      A. That's true.

Q. No other stock held by anyone else involved?

A. No one else, no sir.

Q. With reference to the equipment of the company, when any of you desires to use that equipment for personal service, how is it handled in your company?

A. We never do split hairs in that matter; if someone wants to use a piece of equipment for personal use, the only thing the corporation asks in fairness to the other members is that it doesn't cost the corporation for the gasoline, oil, and wages or whatever actual obvious expenses might be incurred.

Q. Do you run any such use as that through the books as a haul or trip?

A. No, sir, it's purely a personal matter.

Q. Now, do you live on a farm down near Sunnyside?      A. Yes, it's south of Sunnyside.

Q. About how far?

A. Two and a half miles. [200]

Q. Two and a half miles south?      A. Yes.

Q. Did you have any livestock on it in August, 1948?

A. Yes, sir, I have some White Face stock.

Q. What kind, how many animals did you have?

A. I don't remember at this date, but it was between 35 and 45; 40, perhaps.

Q. Where is your farm located with reference

(Testimony of Melvin E. Waller.)

to that that Charley Williamson actually lives on?

A. I'm just exactly directly west of Charley Williamson's farm, adjoining it.

Q. How long have you known him?

A. Two years; about two years.

Q. What is the extent of your friendship with Charley Williamson?

A. That varied; it has gone into many phases. I don't know how far to go ahead and answer that.

Q. What kind of transactions have you been engaged in together?

A. We have—I've purchased quite a few things to support my cattle arrangement from him, in the matter of hay, grain; I've used his trucks and tractors; he has various small trucks and tractors, and we have the larger things, tarps back and forth, a hay fork, small things and large, and we've traded cattle, I've purchased some from him, he's [201] purchased some from me.

Q. Do you have any borrowing transactions?

A. Oh, yes, indeed. That goes on all the time. It's a little unusual, I guess, perhaps; I don't know if it is among people that know one another, live that near, but I can take from him what I want to, even though he might not be there, and he takes from me what he needs; there's just never any doubt about an honest, square settlement with Charley at a future date.

Q. Has he borrowed from you while you haven't been around your house, taken property away without you seeing it?

(Testimony of Melvin E. Waller.)

A. Yes, sir. I discovered just a few moments ago——

Mr. Erickson: That's objected to.

The Court: I think we'd better not go into detail; that might take a long time.

Mr. Robinson: Well, the relationship is pretty close. I'll ask the same question I asked Mr. Williamson; I don't want to be criticized by the court——

The Court: Well, the jury may retire; you may make your offer of proof.

(Whereupon, the following proceedings were had without the presence of the jury.)

Mr. Robinson: Your Honor, I offer to prove by this witness that if permitted to answer, he would testify that the relationship of friendship is so close between the two [202] that it wouldn't be possible for one to steal from another.

The Court: There's an objection, I suppose?

Mr. Erickson: Yes, I object.

The Court: I'll sustain the objection. Have you any authority that friendship could be so close that there couldn't possibly be larceny between two people?

Mr. Robinson: No, I don't think I could cite any cases on it offhand.

The Court: I'd hear them if you have them. I have some pretty close friends, but none so close they couldn't steal from me. I think we'll take a short recess.

(Short recess.)

(Testimony of Melvin E. Waller.)

(All parties present as before, and the trial was resumed.)

(Whereupon, the following proceedings were had within the presence of the jury.)

Direct Examination (Continued)

By Mr. Robinson:

Q. Mel, prior to August 23, Monday, August 23, 1948, had you and Charley Williamson discussed feeding of livestock?

A. We may have discussed something about it, I don't recall; just prior to August 23?

Q. Yes, prior to Monday.

A. I think he may have mentioned something about it; I just absolutely didn't believe it, didn't want to chance it.

Q. Didn't want to chance what? [203]

A. Feeding potatoes; I had heard that they would choke stock if you weren't there. I know I wouldn't have carried a discussion of that nature very far at that time; I hadn't tried them.

Q. And did Charley Williamson try to get you to feed potatoes?

A. Yes, he mentioned it frequently, told me what fine food they were, and told me they were good stock feed.

Q. Now, with reference to Charley Williamson on August 23 and 24, what did you know about the exact extent of Williamson's potato farming activities?

(Testimony of Melvin E. Waller.)

A. Oh, nothing particularly. I knew that he was in some manner involved with the government, it could have been the state or the county, I didn't know, in some kind of a program.

Q. Did you know that at that time that he was delivering potatoes at Sunnyside to the sorting houses?

A. I presume I knew it. I was aware of it. I couldn't have said where he was delivering them, or anything of that nature.

Q. That's prior to your conversation with him on Sunday?      A. That's right.

Q. Now, at that time had you raised any commercial potatoes on your own place at all?

A. No, I never did raise any potatoes.

Q. Not suitable for it. Prior to August 25, 1948, had you [204] ever purchased any potatoes from the government?      A. No; no.

Q. Before August 24 did you have any knowledge that the government was selling potatoes to processors and stock feeders?

A. Not prior to the 24th, no.

Q. Did you get some information on the 24th, or about that time, about the program, about the sale of potatoes?

A. Yes, I did. I talked to several people about it, including Mr. Williamson, Charley Williamson.

Q. Did you get any information that the government claimed to own the potatoes after it sold them for stock feed and they had been sold and paid for and delivered?



(Testimony of Melvin E. Waller.)

A. No, I didn't know anything about that.

Q. When was the first time you ever saw any contract papers with regard to the potato purchase program, Mel?

A. I think it was—in fact, I know it was during the close association Mr. Spaulding of the Federal Bureau of Investigation and myself had; he showed me a copy of the contract, showed me what I had signed; he assumed that the contract made with my brother was one that I had signed.

Q. He showed you a copy of the contract. That was in the latter part of September, is that correct?

A. A blank copy, yes, the latter part of September, sometime in September, I don't recall the dates. [205]

Q. Had you ever seen any of the contract forms before that time?

A. No, that's the first time I had seen the contract forms.

Q. Prior to your transaction with Charley Williamson had either you or your firm ever hauled any of these potatoes sold by the government for feeding and processors?

A. I'm sure we never did. I am not aware we ever did any of that kind of hauling.

Q. In August, 1948, did you have a direct financial interest in some other potatoes?

A. Yes, I have a brother-in-law, Kenneth Hathaway, that farms down near Prosser and processes his potatoes near Granger.

Q. What quantity of potatoes was he growing?

(Testimony of Melvin E. Waller.)

A. As I recall it, he had in fifty acres of potatoes on the Roza.

Q. What was your interest in those potatoes?

A. My brother-in-law is not a very forward individual, and he didn't have any outlet for these potatoes he was growing, and they were about ready to come off, and he borrowed some money from me to commence harvesting with, with the statement that later when they came off he and I could work out some sales program and probably a profit-sharing arrangement.

Q. Had those potatoes been delivered or marketed by August 23?

A. Just dug a few, just a sample, one Sunday I was at his [206] place.

Q. Were those potatoes under any subsidy program of the government?

A. Oh, I don't think so.

Q. Now, with reference to Charley Williamson again, prior to Sunday, August 22, 1948, I assume you knew Charley Williamson was delivering some potatoes in Sunnyside?

A. Yes.

Q. What was the conversation you had with him on that Sunday, Mel?

A. I believe Charley contacted me by 'phone and told me that he was stepping up his potato digging program, that all of his trucks were tied up in transporting potatoes from the field to the local warehouses, and wanted to know if he could use one of our heavier units, you know, that would haul more, for transporting the potatoes from the ware-

(Testimony of Melvin E. Waller.)

house to his place, his feed lot. I think he told me, I'm thoroughly familiar with the arrangement there, and he explained the location of it, I had never been there, but I knew just about where it was, and the access roads; he went to quite some length on the 'phone to tell me that I should be feeding some of these potatoes, that they were good, that he had dumped a lot of them at his place and his cows were just doing real well on them.

Q. Was there anything said about the sacks or about details [207] on it?

A. Two things he was very specific about. One was that we should be at the Simmons Warehouse at 7 o'clock in the morning, and the other was, be sure and have the empty sacks back on the truck, because I believe he told me he was going to change warehouses, and he wanted to clean up that whole deal.

Q. Did you discuss with him at that time whether some of the potatoes would be hauled to your place or hauled to his place?

A. Well, he insisted that I take some to my place, and I didn't tell him I would or wouldn't; the thing was left open, and certainly I could have gone to my place with them, or I could have gone to his. The main thing he wanted was to remove those potatoes from the Simmons Warehouse on the following Monday morning.

Q. Now, what action did you take to comply with his request, Mel?

A. One of the men, he was a little shorter in our

(Testimony of Melvin E. Waller.)

employment than some of the rest, came by on that Sunday afternoon, and I sent him up with one of the flat bed semis, explained to him to be at the Simmons Warehouse the following morning, and told him what unit to use, and so on.

Q. Was this transaction one that you were handling personally with Charley Williamson, or did it involve an official haul [208] by the Herrett Trucking Company for Williamson?

A. No, I'm the only one that has any farming associations, and it was my deal purely.

Q. Your relation to him is closer than anyone else in the organization, is that correct?

Mr. Erickson: That's leading.

The Court: Sustain the objection.

Q. Did any of the other members of your organization know Mr. Williamson very well?

A. Oh, they knew him, because he had been in our place so many times, but when he came in it was always me he asked for; it was just a greeting, and that's about all, if I didn't happen to be there, I think.

Q. You say one of the drivers came by? Which one was it? A. Adamson, Robert Adamson.

Q. Came by on Sunday? A. Yes.

Q. And you told him to do what?

A. Told him to prepare one of the semi-trailers, and I designated the one, big flat bed unit, no side boards or anything; told him to service that, gasoline and make sure the rubber was ready to go, and

(Testimony of Melvin E. Waller.)

be at Simmons warehouse at 7 o'clock the next morning.

Q. Did you tell Adamson anything about how to load the potatoes? [209]

A. No, I felt it was too short a haul to make any difference; he might have it all in the middle, or how it was, if he could only get 200 sacks on, it was all right; it was just a short job, and I didn't outline his program for him.

Q. What did you tell him about the destination of the truck after it was loaded?

A. It would have been difficult to have explained just how to get to Williamson's pasture, and I told him to bring the truck by, after he had loaded it, I would be there, and measures would be taken to unload the truck after he had loaded it.

Q. To bring it by where?

A. By Herrett Trucking Company, and park it, come in and see me.

Q. Now, had you or your organization hauled potatoes before?

A. Oh, yes, lots of potatoes, but no potatoes on just flat racks.

Q. How do you usually haul potatoes?

A. We normally, oh, 95 per cent of the time, I'm sure, haul them in vans. The shipper asks that protection, you know, sun scald, you know. Occasionally we hauled them in our units that have side boards similar to stock racks, and then we cover with tarps to protect against the sun and wind.



(Testimony of Melvin E. Waller.)

Q. Do you haul any sacked commodity on flat bed trucks? [210]           A. Just cement.

Q. In what form, what container?

A. In bags, 100—95 pound bags.

Q. Did your driver Adamson know the practice used in preparing any sacked item for a long distance haul on a truck?

A. Oh, yes, he'd been with us long enough to know our general operating procedure.

Q. Now, during the day on August 23 did you see the potatoes that were being loaded on the truck?

A. I couldn't understand why the truck hadn't come by sooner, I just missed it, and I drove down in my car as I was going home to lunch, drove out of my way down to the Simmons Warehouse, and Adamson was on the trailer, about half or two-thirds loaded.

Q. How far is the Simmons warehouse from the Herrett Trucking Company office?

A. Six or seven blocks.

Q. Did you have any conversation with him regarding the loading?

A. I asked him what the tie-up was, why he wasn't getting loaded faster, and he told me that the potatoes were coming out quite slowly, it was only the potatoes sent in by Williamson for processing that were coming out, and I also asked him why he was covering the load with the tarp, and he said he was covering it in order to haul the potatoes, to [211] keep them from falling off. He was stacking



(Testimony of Melvin E. Waller.)

them very high and making a bigger load than I thought he should on a flat bed.

Q. Do you remember how high he was stacking them? A. Oh, must have been five high.

Q. That's five sacks one above the other?

A. Yes.

Q. Did you get out of your car when you were down there, at all?

A. No, just drove up, I was headed the opposite way he was, looked out the left window, and I spoke from the window of my car.

Q. Went on with your car, did you say?

A. Yes, from the window, just looked out the window of my own little coupe.

Q. What followed on Monday regarding that truck? Where was it taken to after it was loaded?

A. Oh, sometime, as I recall it, about 5 o'clock, Adamson brought it by the Herrett Trucking Company, stopped out on 6th Street; I don't recall if he let it sit on 6th Street, or if I had him pull up around on Grant; I guess he pulled around on Grant Street and came in. We were, you know, quite busy preparing other trucks to go out and load, for long trips, you know, general servicing; I didn't have anyone there I could send out, I couldn't get [212] away at that moment, and being kind of a personal arrangement, I didn't want the company to be furnishing high priced truck labor to unload potatoes, and I asked Adamson if he could stick around a while, I might go with him, and he says his wife wanted to go somewhere, or wanted the car, he lives

(Testimony of Melvin E. Waller.)

at Grandview, and I said all right, and you be back tomorrow morning and take that same piece of equipment and do the same thing with it.

Q. Now, did you have on that same Monday a further conversation with Charley Williamson?

A. I saw—no, I guess he called me on the 'phone again on Monday.

Q. About what time?

A. Oh, it was dusk, it appears to me, about 8 o'clock, I'd assume. He called me on the 'phone and told me that he had one of his own little farm trucks down there with 125 or some neighboring amount of potatoes on it. He said "I know you keep arguing with me about these potatoes, you don't want to take that big load; I'd like to get you to feeding those," inferring that if I fed them and found them all right——

Mr. Erickson: I object to what he's inferring.

The Court: Yes, sustain the objection. Just what he said.

Q. Just what he said. [213]

A. He said I should be feeding potatoes to my stock, and to come down and pick up that little farm truck of his, that he was going on about some other business, and he would let it sit there loaded. He said there were that many more that had been run that day than this load of Adamson's had taken away; so I think as I recall it I took that truck and parked it near Herrett Trucking Company, and asked Homer if he would give me a hand that evening. I told him I had two loads I wanted to throw

(Testimony of Melvin E. Waller.)

off. We went home to eat dinner that evening, it must have been 9 o'clock, and came back, and Homer and myself were just ready to pull away, we had completed our work at the office and shop and had all the trucks that were scheduled for movement that night serviced and ready to go, the drivers told what their orders were, and Homer and I were just ready to leave to go to my place, filled the gasoline lanterns, and Sanders came by in his car.

Q. You mentioned you were getting trucks ready to load. What is the usual arrangement with reference to trucks going out on long hauls in the commercial trucking business activity that you carry on?

A. Most of those truck movements are made at night through the hot part of the season, summer like that, a great many of those commodities are loaded at night from the warehouses, that afford more protection than one of those [214] vans do, you know, for these fresh vegetables.

Q. What percentage of cross-state or longer trips would you say was commenced at night in the month of August, 1948?

A. Oh, almost all those trips were commenced at night; 90 per cent I think is a fair figure.

Q. Most of the trucks run at night on the long hauls?

A. Yes, indeed.

Q. Now, referring again to what you did on the evening of August 23, you say you went to dinner and then you came back and you and Homer were about ready to go, and somebody came up?

(Testimony of Melvin E. Waller.)

A. No, there was work at the shop, I think about an hour and a half work, we ate a very hurried meal, as you do when our wives have the food prepared for us, finished the work concerning the Herrett Trucking Company, then as a personal request to my brother Homer I asked him if he would help me unload this load of Williamson's out at my place, I mean the load on the small truck, you know.

Q. The Williamson truck? A. Yes.

Q. And you and he were starting out when somebody else came along?

A. Sanders, one of our drivers, came by at that time in his car; he had a night off, and I guess he was on his way home, and we told him we needed another good man to give [215] us a hand, and he followed us out to my place in his car, and the three of us unloaded those potatoes.

Q. About what time was that?

A. Oh, 11, 11:30, 11:45, we unloaded those potatoes.

Q. Was there anything unusual about loading or unloading at that time of night in your commercial trucking activity? A. No.

Q. Now, what did you discover with reference to these potatoes when you unloaded that load at your place?

A. They were for stock feed, you know; when Charley asked me, his only reference to potatoes was "Do you want to feed these to your cows?" and I was amazed when I commenced pouring these potatoes out. I took a lantern, got down on the ground,

(Testimony of Melvin E. Waller.)

had more bags of them dumped. I had never seen potatoes any finer, and very seldom had we ever been permitted to buy anything as fine in the stores; they were the finest.

Q. What had you thought the potatoes were that were being fed, before that time?

A. Culls, rejects.

Q. Now, at that time what did you decide to do with regard to other of the Williamson potatoes?

A. I had already seen these little dinky potatoes coming out of the ground at my brother-in-law's place, you know, he showed me what the general picture was, how many tons he [216] could expect; I don't know much about it, but he just kind of outlined, when I loaned him this money, what percentage of good potatoes I could expect, I guess in the way of conversation to make the loan feel secure; he told me how much it would cost to put the potatoes through the little warehouse at Granger, and it just didn't look very sensible to me to take potatoes that were so good and throw them to the stock, and then go to all the expense of washing and cleaning and fixing other potatoes to go to market.

Q. What did you decide, then, at that time?

A. The thing that I first made up my mind on was I should take these already washed, clean potatoes, and sell them, and if I needed more potatoes for stock, then the Hathaway potatoes were in the picture; I would at least save the difference in the sorting.



(Testimony of Melvin E. Waller.)

Q. Did you anticipate Williamson would make any objection to that?      A. Oh, no.

Q. Why not?

A. Well, I came back after unloading that small load, and got in my car; I knew Charley was hauling lots of potatoes from his place, I had seen the trucks go back loose, no sacks, and he only had about twice as many cows as I had; I drove out to this feed lot of Charley's at night, 11:30 [217] or 12 o'clock.

Q. This was in your car?

A. Yes; I wanted to see if Charley had lots of potatoes.

Q. What did you find?

A. Oh, he really had lots of potatoes, just deep, and the cows milling over them, lying in them, standing on them, just all kinds of potatoes.

Q. Well, now, later in that evening then what did you do?

A. I went back to the garage, to our shop, and I had purchased some salvage grain, and I had some sacks left over from that grain that had been spilled, and I told, I think I told Sanders to take the truck that he normally drove, which was a Federal with a van trailer behind it, and drive to a little building that the Herrett Trucking Company occupied a block from our headquarters, and I would throw some bags in there, and he was to take that truck and follow me, I was going to take another truck and drive out of town, I didn't tell him exactly where, just told him south, so he pulled the truck down there, I opened up this place and threw in a



(Testimony of Melvin E. Waller.)

hundred or so bags of these new grain bags, then I went back, started up the truck that Adamson had loaded, told my brother Homer to check the lanterns and make sure that they were full——

Q. Did you drive out, then, toward the Williamson place?

A. I got lost on the way out there; I had just been out there, [218] but I missed the road by a block.

Q. What kind of a road is that that goes down that pasture?

A. Oh, it's kind of a narrow little road, wide enough for two-way traffic if you're very careful.

Q. Were there some potatoes transferred, then, substantially in accordance with the testimony given before?

A. Yes, I think it's just the way Mr. Carver said, generally, we just bagged exactly 100, as I recall; we poured potatoes out of the Simmons bags, I don't remember what it said on the bags, but it was the Simmons bags that Charley wanted back, and we poured those in the new grain bags. The whole tops of these bags that Williamson wanted back were bad, and besides, he wanted them back, I don't know why, I guess I did find out later why he wanted them back, but we poured out just 100, an even 100.

Q. The next day was action taken to complete the load?

A. Yes; in addition to that 100 we poured out into my grain bags, I carried 40 or 50 bags off of

(Testimony of Melvin E. Waller.)

this flat bed trailer and set in the back, just on the floor in the most convenient way, so we went back to our lot with those 100 bags that had been transferred from one bag to another, and 50 or so bags of the potatoes still in Simmons sacks.

Q. Next day was the load finished out in the van?

A. Yes, just as quick as I could get around in the morning, we were a little bit late, nothing commences in the trucking [219] business until 10 or 11, we always open earlier, but not much of a crew, and I got Sanders and the man that drove opposite him on long trips, you know, the two that drove together on a piece of equipment, Sanders and Smith, and I told Sanders I wanted him to help me finish the load, and told Smith to give me a hand too.

Q. You finished the load out at that time?

A. The following day, yes.

Q. Skipping some of the details, possibly, Mel, did Homer go to Portland on Tuesday, August 24?

A. That trip was all set up. We had quite a little business in Portland. Homer is the Herrett Trucking Company outside buyer, and checks up on any people we're doing business with away from the Herrett; he had a trip scheduled for Tuesday anyway, and I run this in as kind of an extra-curricular responsibility.

Q. What other business did you have set up for him in Portland?

A. Well, as I recall it, some little dispute with the Utility Trailer people, and some parts to secure, and adjustments on breakdowns with Freuhoff, and

(Testimony of Melvin E. Waller.)

Roberts Motors, one of the largest suppliers for trucks our size, to pick up some parts.

Q. What instructions did you give him regarding the load of potatoes, regarding the sale of them?

A. I told Homer, he knew of my brother-in-law, Kenneth [220] Hathaway, anyway, I didn't need to go into long detail to explain he was a potato rancher; I told him I was going to aid Kenneth in marketing his potatoes, this is going to come a little earlier, but I expect to aid Kenneth in selling the rest of the potatoes, but you go down and sell these potatoes in the name of Hathaway Farms, get the highest possible price on them, I don't know the grade, and he certainly didn't, and Sanders and Smith didn't, so I didn't want to put anything on the bags, I didn't know what they amounted to. I told him to let the potato buyers, they'd know whether they were good or bad, and I assume most quick to find if anything were wrong.

Q. When did Homer return?

A. Wednesday, pretty late Wednesday night, as I recall it.

Q. Did he have the check with him that's been referred to here?

A. Yes, he brought that check with him.

Q. It's plaintiff's exhibit 17.

A. That's all right; I don't have to see that.

Q. Now, did you replace with Williamson the potatoes that——

Mr. Erickson: To which we object, that restitution is no defense.

(Testimony of Melvin E. Waller.)

Mr. Robinson: Well, I know that restitution is no defense.

The Court: Finish the question. [221]

Q. —that had been sent to Portland?

The Court: I'll overrule the objection.

Q. Answer it.

A. Yes, sir, I replaced those potatoes.

Q. Mel, have you ever denied loading and transporting these potatoes?

A. No, after I was asked, and when any investigators told me what it was that they wanted, I told them all I knew.

Q. Now, in handling these potatoes did you have any intent to steal them from anybody at all?

A. No, no, I wasn't stealing them; hadn't entered my mind.

Q. Did you have any intent to violate any criminal law with regard to moving or converting them?

A. No, you can be sure I had too much at stake for that; no.

Q. Did you at any time, Mel, intend to steal any property owned by the Commodity Credit Corporation?

A. Oh, certainly not. No. Positively not.

Q. Did you know at that time that the Commodity Credit Corporation claimed to own these potatoes?

A. No; no; first time I knew that was when Mr. Garner came to see us, and spent quite a number of hours in our office, went through records and books; I don't know what all Mr. Robinson made available

(Testimony of Melvin E. Waller.)

to him, but he was certainly to do that. Mr. Garner then came back——

Q. That's Mr. Robinson, your associate? [222]

A. Yes, Kenneth Robinson, the secretary and treasurer of our association. Mr. Garner came back a few hours later in the afternoon with Mr. Williamson, Charley Williamson, in Mr. Garner's car, and the three of us rode to various places——

The Court: What was the question?

(Whereupon, the reporter read the question, as follows: "Did you know at that time that the Commodity Credit Corporation claimed to own these potatoes?")

The Court: I suppose the answer is no.

A. No.

The Court: Ask another question.

Q. Mel, have you previously been convicted of an offense? A. Yes, sir.

Q. What offense? A. Grand larceny.

Q. When was that?

A. I wasn't of age, as I recall it.

The Court: That doesn't answer the question.

Read the question, please.

(Whereupon, the reporter read the last previous question.)

A. In 1933 or 1934.

Q. How old were you then?

A. I was trying to reconstruct the thing, but I was 19 or 20. [223]

Q. Have you any other convictions on your record at all? A. No.

(Testimony of Melvin E. Waller.)

Q. Was this conviction known to the authorities when you were commissioned an officer in the Army in the South Pacific?

Mr. Erickson: Now, to which we object.

The Court: I think that's immaterial. Sustain the objection.

Q. Was your record in the Army entirely clear?

A. Yes, sir.

Mr. Erickson: To which we object.

The Court: Well, that's all right. I'll let him answer that.

Q. Were you decorated while you were in the Army?           A. Yes.

Q. For bravery?           A. Yes.

Mr. Robinson: That's all.

### Cross-Examination

By Mr. Erickson:

Q. You were convicted in 1935, were you not, sentenced May 23, 1935, at Wenatchee, for grand larceny; is that right?

A. I must reconstruct this in my mind. I'm now 34. That would make me 20 years of age, wouldn't it?

Q. I asked you if that's the date you were convicted.

A. To the best of my recollection it was 1934 or 1935, I don't [224] remember exactly. It's been quite a long time. I hadn't exactly anticipated that question.

Q. You were sentenced at that time to not more than——

Mr. Robinson: Just a minute.



(Testimony of Melvin E. Waller.)

The Court: I think that's improper. Sustain the objection.

Q. Now, when you send these trucks out on these hauls you have to have a permit, do you not, when you haul potatoes, from the State Department of Agriculture or Horticulture?

A. We've never had a cash buyer's license; that's a separate association from what we operate on.

Q. You mean when you truck potatoes from one county to another that you do not have to have a permit from the State Department of Horticulture to transport those potatoes from one county to the other?

A. Mr. Garner went into some lengths with me on that, and that's true when something is made a part of our bill of lading, that I hadn't given a thought to.

Q. You hadn't followed that practice before of getting a permit from Mr. Craver or any men in his office, had you?

A. Before what?

Q. Before this offense?

A. No, that had never been necessary; if we loaded a load of potatoes, the inspector was there, inspected the load probably hours or days ahead of the time we picked them up. [225]

Q. Did he write out a permit and give you the permit to take with you, to your driver?

A. I think that was usually made a part of the papers carried from the shipper to the consignee, yes.

Q. You were familiar with that process, were you not?

(Testimony of Melvin E. Waller.)

A. Yes, if I were given time to think about it I could recall it, yes.

Q. Why didn't you go to Mr. Carver for this load you took to Portland, and get a permit from him?

A. I wasn't acting in the capacity of a shipper, I mean of a trucker; I was acting in the capacity of a farmer.

Q. Oh, you were a farmer?

A. I was marketing those potatoes as if I were a farmer, as part of the Hathaway Farms.

Q. You considered yourself a partner to Hathaway, then, for the purpose of these potatoes?

A. In effect that's true.

Q. You considered that these potatoes you took from the Williamson feed lot were raised by Hathaway, therefore you justified that conclusion, so you did not have to get a permit from the State Department of Horticulture?

Mr. Robinson: Object to that as argumentative.

The Court: Overrule the objection, if you can answer it.

A. That comes kind of in the form of putting words in my [226] mouth. I can answer it yes or no. May I hear that question again?

Q. Well, I'll withdraw the question, and ask you hauling these potatoes without a permit because in hauling these potatoes without a permit because in your own mind they were grown on the Hathaway Farm?

A. We know lots about trucking regulations. I

(Testimony of Melvin E. Waller.)

don't know much about marketing regulations or farming regulations.

Q. You made no effort to find out in this case?

A. I missed that.

Q. You made no effort to find out the regulations from the Horticultural Department?

A. No, I think I made no effort to find that out.

Q. Now, on the 23rd of August you state that the first time you were aware of the fact that these number 1 potatoes for stock feed were such good potatoes is when you saw them on your own feed lot, is that correct?

A. That's correct.

Q. You didn't know anything about this load being, having good potatoes that was on your flat bed truck up there near the Simmons Warehouse?

A. No, I wasn't aware of that.

Q. Then why did you keep it protected with tarpaulins and protect it from the sun and wind?

A. That think was done, there's no question but what the tarp [227] was thrown over it, but you can be sure it was not at my direction.

Q. Well, whose direction was it?

A. The loader is a conscientious man, nothing has been explained to him these were for stock feed; in fact, he ended up in helping unload them, the second load, I think he probably didn't know he was hauling for stock feed.

Q. How did you happen to go to your own feed lot at night?

A. I do a considerable work with my hands.

Q. So you went to your feed lot at 12 o'clock and

(Testimony of Melvin E. Waller.)

set up gasoline lights and worked until 3 o'clock in the morning, isn't that right?

A. That's exactly true; not until 3 o'clock in my own feed lot, no; I worked until 11:30.

Q. I mean in the Williamson feed lot; you worked down there later on?      A. That's true.

Q. You were transferring the potatoes from branded sacks into plain sacks down there, weren't you?      A. Yes.

Q. Well, just when do you sleep?

A. I attempted to bring out a moment ago the trucking business is one that's not too active early in the morning. Almost all functions and things relating to trucking occur in the afternoon, particularly in the evenings and nights. That's [228] not a rule peculiar to the Herrett Trucking Company; that's a part of trucking.

Q. If you were going to transfer these potatoes into plain sacks, why didn't you do it right at your warehouse in town?

A. I didn't know exactly what were in those sacks. I knew that was the logical place to dump those potatoes then, in Charles Williamson's feed lot.

Q. Well, then, why did you dump 100 sacks in the feed lot and bring the rest to town?

A. Because when I arrived there I found they were good, as I anticipated after unloading the ones at my place.

Q. Why didn't you take the 100 sacks and take them back to town too?

A. You mentioned a moment ago that I needed

(Testimony of Melvin E. Waller.)

sleep. I do need sleep; three o'clock was as much time as I could give to that.

Q. You were tired then, so you threw 100 sacks on the ground, and brought 250 back to town, is that right?

A. That's right, 200, something of that nature.

Q. Then you parked that truck in Sunnyside, and you knew at that time it was going to Portland, so you protected it with a tarpaulin?

A. No, they were in the van, parked there in the most normal of natures. [229]

Q. Well, how come you drove the van down there to the feed lot if you didn't know before that you were going to move these potatoes into the van?

A. I knew that some of them were good; I had looked at a few of the sacks; I unloaded this whole load on my place, and knew they were good. I knew I was going to do some sorting if necessary.

Q. So at the time you drove the empty truck down to the feed lot you knew then that you were going to take some of those potatoes back, didn't you?

A. That's the reason I put the grain sacks in.

Q. Then when you got back to Sunnyside you had room for about 100 sacks more, almost 100 in that van, didn't you?

A. We had a total of 320; it would have been in that neighborhood, yes.

Q. What was the capacity of that van?

A. Normally 16 ton, 320 hundred pound bags.

Q. And you gave directions to get some other number 1 potatoes to complete that 16 ton?



(Testimony of Melvin E. Waller.)

A. I had already told the driver when he came in Monday afternoon to go on home, do whatever he wanted to with his wife, and be prepared to haul more potatoes the following day, under the same arrangement.

Q. And did your drivers tell you when the load was complete?      A. What drivers? [230]

Q. Well, your truck drivers, tell you, or your employees tell you, when you had your 323 sacks on the van, or how did you know that the 323 sacks were on the van?

A. I worked shoulder to shoulder with the two drivers. I was there during every part of the operation.

Q. Where did the rest of these potatoes come from, the Pasco Growers?

A. Well, you may call it Majonnier's.

Q. And you poured them out of the branded sacks into the plain sacks too?

A. That's right, and made up 323 bags.

Q. So that every one of the 323 bags was a plain bag?      A. Every one.

Q. And the reason you, of course, put them in plain bags was so nobody could tell where they came from?      A. No, that was not the reason.

Q. What was the reason?

A. Williamson made it very clear he wanted those bags back. I knew I was going to sell these potatoes. If he wanted his bags back it wasn't up to me to argue; there were two things he mentioned, the time the truck was to be there, and he wanted the bags back. I didn't argue with him or carry it further.



(Testimony of Melvin E. Waller.)

Q. You gave your brother Homer directions to sell these potatoes in Portland? [231]

A. Yes, I did.

Q. And you got the check? A. That's right.

Q. And you endorsed the check?

A. That's right.

Q. Why didn't you put your name on the check?

A. I had permission from Kenneth Hathaway to endorse that check as Kenneth Hathaway; the check had been made out to Hathaway Farms, had it not?

Q. Yes, it's made out to Hathaway Farms.

A. Wouldn't it be difficult for me to sign that check by putting my name on it?

The Court: Just answer the questions.

Q. You didn't put your own name on for identification?

A. Oh, I don't think that was necessary.

Q. The proceeds for that check were put in your pocket?

A. I took the proceeds from that check back, it was quite a long time after the issuance of that check until I cashed it, I don't remember what length, but the proceeds were taken back, we have a little square safe in the office, after I had paid the drivers and reimbursed the Herrett Trucking Company for the gasoline, I put the rest in an envelope, and it lay there quite a long time. Eventually it went right directly to me.

Q. It went where? [232]

A. To me. Into my pocket, as you state.

Q. You made no record on the books of the Her-

(Testimony of Melvin E. Waller.)

rett Trucking Company about the receipt of this money?      A. No, that's true.

Q. The books of the Herrett Trucking Company didn't show that this van truck ever went to Portland with these potatoes?

A. I don't think the Herrett Trucking Company actually knew it. There were members of the organization that knew it, but it was not a company function, and for that reason it didn't enter the records of the company.

Q. The Herrett Company employees made the trip?

A. They were in the employ of Mel Waller personally at the time they made that trip, and were reimbursed by Mel Waller.

Q. You paid them personally, cash out of your pocket?      A. That's right.

Q. You didn't pay them by Herrett funds?

A. No, I'm sure that's right.

Q. You keep no personal books, of course?

A. No.

Q. The record doesn't show on your personal books?

A. No, I'm too small an operator for that.

Q. How much did you pay them?

A. There's a union scale established of \$28.00. Each one of [233] those men drew the \$28.00 scale.

Q. \$28.00 apiece?      A. \$28.00.

Q. Who were the two men?

A. J. D. Sanders and R. C. Smith, both of Sunny-side.

(Testimony of Melvin E. Waller.)

Q. Was it a Herrett Trucking Company truck or a personally owned truck, this van truck?

A. No, that was a Herrett Trucking Company truck.

Q. Did you reimburse the Herrett Trucking Company for the use of that truck?

A. Just the gasoline, and paid the drivers.

Q. Didn't pay them anything for the wear or depreciation on the truck? A. No.

Q. How much did you pay the Herrett Company for the use of that truck?

A. The gasoline was figured out; it's normally about 100 gallons. I replaced that.

Q. How much would that be?

A. Approximately \$25.00.

Q. Is that shown on the books of the Herrett Trucking Company? A. I'm sure it is.

Q. Do you have the books available that show that transaction?

A. I hadn't anticipated that question; I didn't bring any books with me. [234]

Q. Have you ever seen that transaction on the books of the Herrett Trucking Company?

A. No.

Q. Did you report it to any officer of the company to incorporate in the books?

A. Yes, I think that was an accepted, well-known fact by the secretary and treasurer, or the bookkeeper, at least.

Q. Who did you report the transaction to?

A. When one of us personally draws gasoline from the——

(Testimony of Melvin E. Waller.)

The Court: Can you answer that question? Read it.

(Whereupon, the reporter read the last previous question.)

A. That's not a question that can be answered with a yes or no or a word. There's an explanation necessary.

The Court: I thought you said you reported it to somebody, and counsel asked you who you reported it to.

Q. Who did you report it to?

A. In the true form of a report, I can't answer that question. There was no formal report.

Q. Well, how did you report it to the company?

A. May I make an explanation there?

The Court: You can answer the questions.

A. The Herrett Trucking Company, when an individual buys gasoline, keeps a record of the amount of gasoline that's charged to the individual, whether it be an employee, I'm [235] an employee of Herrett Trucking Company, and the gasoline was charged to me on a slip of paper in the regular form that hangs on the gasoline pump. The 100 gallons of gasoline that it took the replace that that was drawn out the night that truck filled up, that was all charged to Herrett; when the truck returned I took the truck over, filled it with gasoline, and charged that amount; the tanks are of sufficient size to run it to Portland and back, and charged that amount to myself on the slip that hangs on the pump, and reimbursed the company in the same manner that an individual or employee would pay the company.

(Testimony of Melvin E. Waller.)

Q. You just hung the slip on the pump and left it there; you don't know what became of it?

A. No, it's a slip that holds many names; it's left there until it's full; there's a special place prepared for it out of the weather. It's a business-like arrangement.

Q. Now, you knew that these potatoes were stock food potatoes when you took them to Portland?

A. Yes, I think Williamson inferred that they were stock food potatoes.

Q. Williamson told you that they were stock food potatoes, didn't he?

A. He didn't pin it down to specific stock food potatoes. He said, "Here are potatoes for your cows," in effect.

Q. He never told you to take any of those potatoes to Portland, [236] did he?

A. No. By the same token, he——

Q. No, you've answered the question. Do you remember telling the investigators, the F.B.I. men and Mr. Garner, that you knew that they were government potatoes, and that the government was mixed up with the potatoes?

Mr. Robinson: Just a minute; I don't recall any testimony——

The Court: I think the question is objectionable in that form.

Mr. Erickson: I'll withdraw the question.

Q. Do you remember your conversation with Mr. Garner about stock food potatoes, knowing that these potatoes were connected with the Williamson program?

(Testimony of Melvin E. Waller.)

A. I presume you're asking for a yes there, which again cannot be answered with a yes; there's a qualifying statement goes with it.

The Court: I don't know why it couldn't be; read it.

(Whereupon, the reporter read the last previous question.)

The Court: I'll take that back; you don't have to answer that yes or no. Answer it in your own way, if you wish.

A. Mr. Garner and Mr. Spaulding are well-educated men; they are good investigators, and during the course of this [237] investigation we had to have common ground, we had to call them Williamson potatoes, government potatoes, or by some common name; if we just referred to potatoes it is open to constantly going over the same words. If I referred to those potatoes as being government potatoes, they were merely to identify them as the same potatoes, that we were always in discussion over.

Q. Well, at the time you signed the contract you knew what the price was for potatoes, or had Ed sign the contract, your brother, didn't you, on the 25th of August?

A. Yes, I think I knew the price of those potatoes at that time.

Q. You sent the money up there?

A. That's true.

Q. You knew at that time that the potatoes were sold for stock food, didn't you?



(Testimony of Melvin E. Waller.)

A. At the time that I sent the money up for that——

Q. Yes.

A. ——original purchase on August whenever it was, the 25th?

Q. Yes.           A. Yes, I sent the money.

Q. You knew what the price was that you were buying those for?

A. Yes, I knew it was \$2.00 a ton.

Q. And you knew that those potatoes could not be sold into the channels of retail trade, at that time?

A. No, I didn't know that at the time I sent the money.

Mr. Erickson: That's all.

### Redirect Examination

By Mr. Robinson:

Q. Mel, with reference to the buying of gasoline that's been referred to, do your employees purchase gasoline from the Herrett Trucking Company, truck drivers and others, for their personal use?

A. We add a cent a gallon to the purchase price of the gasoline, and sell it to the employees and individuals of the concern.

Q. You get a reduction that way?

A. Four cents a gallon.

Q. Explain again the procedure you follow to keep track of that.

A. You want to know the particular case of this 100 gallons?

Q. No, the general procedure you follow.

A. We keep locks on the pump, of course, and

(Testimony of Melvin E. Waller.)

they're constantly locked. The first thing you do, naturally, is unlock the pump, then put the gallons of gasoline in the vehicle; there's no attendant there; each employee is trustworthy; he places the amount of gasoline in there, then there's a slip in a weather-proof case that hangs near each pump; the employee goes to that, marks down the date, his name, after it the amount, and there's a meter reading, a constant rotating meter, and marks the meter [239] reading on that; then at the end of the week when his account is straightened up, we make a check for his regular wages, and then we make one for whatever draws he has, including gasoline.

Q. With reference to the check to Hathaway Farms, at the place you cashed that check were you known to the folks there?

A. Oh, very well, very well.

Mr. Robinson: That's all.

Mr. Erickson: That's all.

(Whereupon, there being no further questions, the defendant was excused as a witness and resumed his seat with his counsel.)

Mr. Robinson: Your Honor, so the character witnesses won't have to come back tomorrow, I thought we might call some of them at this time, since I think counsel won't have any difficulty with his cross-examination now.

The Court: Yes, all right. By the way, I wonder if you couldn't recall Mr. Williamson now for whatever question you want to ask him?

Mr. Erickson: Yes.

CHARLES F. WILLIAMSON,

a witness on behalf of the defendant, resumed the stand and testified further as follows:

Further Cross-Examination

By Mr. Erickson:

Q. Mr. Williamson, you stated that Mr. Waller's reputation [240] for honesty and integrity was good in the community. Have you heard his reputation discussed? A. Yes, sir.

Q. And over how long a period of time has his reputation been discussed, that you know about?

A. Well, all I know is what I've heard in the last couple of years.

Q. Have you heard it discussed that he has been convicted of a felony?

A. I heard when he was a kid he got in a little jam, but there was thousands of kids that done that.

Q. Do you know what a felony is?

A. Yes, sir.

Q. What is it?

A. Well, if you happen to take something that ain't yours, or something.

Q. You don't know the difference between a felony and a misdemeanor? A. What is it?

The Court: I don't think that's a fair question; no layman would, probably. I'll sustain an objection to it.

Mr. Erickson: That's all the questions I have.

(Whereupon, there being no further questions, the witness was excused.) [241]

Mr. Robinson: Call Mr. Grimm.

The Court: Is this another character witness?

Mr. Robinson: Yes, your Honor.

The Court: I think I'll ask the jury to step out a minute. They should relax and stretch a little anyway.

(Whereupon, the following proceedings were had without the presence of the jury.)

The Court: The reason I asked the jury to step out, it's always been my understanding that in calling character witnesses, that the accepted method is to ask the witness if he knows the reputation of the defendant in the community in which he resides for the trait in issue; perjury would be truthfulness, and in a case of this kind it would be the honesty, and counsel has indicated he has some authority you can put a witness on the stand and ask him if he's ever heard anything bad said about a defendant. That's a new one on me.

Mr. Robinson: Well, your Honor, the reference is a recent edition of Abbott, Criminal Trial Practice.

The Court: I wonder if counsel hasn't this in mind, that after the accepted method has been followed, and you ask a witness first if he knows the reputation, he says yes, you ask him if it's good or bad, then if inquiry is made as to why he thinks it's good, he says he never heard anything bad about him. I've never heard it done where you ask him in the first instance if he has heard anything bad.

Mr. Robinson: I might say, your Honor, I never followed the practice I used today, because I've always followed the procedure in state courts. However, a recent edition of Trial Practice that we

have uses the question and answer form exactly as I used it.

The Court: Is that Moore's Federal Procedure?

Mr. Robinson: No, Trial Practice.

The Court: Who wrote the book?

Mr. Robinson: I don't have the edition here; I just wrote the question and answer down. Mr. Salvini and I examined it, with some surprise, I might say, in this Criminal Practice book, which is Abbott. The quotation, and possibly it ties in to a question after the question to which your Honor referred, that is, the good or bad, is this: "It is now well established that in order to prove the good character a witness may testify that he has never heard anything said against his character or reputation, or that he has never heard the matter discussed, provided the witness has been in a position that he would probably have heard the matter discussed." I don't hold any brief for this, and I was surprised. We're not going to follow a procedure your Honor thinks is improper, so there won't be any argument about it.

Mr. Erickson: May I ask a question? I'm not quite [243] clear on what the Court's ruling is on showing the length of the sentence, the time served on the felony charge; is that permissible?

The Court: Well, there is, I'll say, a difference of opinion about it, and not consistency of practice in the Federal Courts even in this state. In the state courts the rule is that you may show that any witness who takes the stand, and of course that includes the defendant, that you may show by



way of impeachment, to affect his credibility, that he has been convicted of a crime. It's been my understanding that in Federal Court the rule is you must show he's been convicted of a felony. Under the laws of this state any violation is a crime; exceeding the speed limit would be a crime. I've adhered to the rule that in Federal Court you may show he's committed a felony, and I think there is some disagreement as to whether you can show the character of the felony, but it seems to me the better reasoning is you can show the character of it, because the very purpose of it is that the witness is less worthy of credit because of the conviction, and the character of the offense would have a great deal of bearing; the one that would most discredit the witness, I think, would be a conviction of perjury; and there are crimes of violence that might not discredit the witness at all. The character of the offense has a great deal to [244] do with the weight the jury should give to it. Beyond that, I don't think it's proper to show what punishment was imposed, that he was sentenced to five years, or two years, or whatever it may be. One defendant may have been given a very severe sentence, another a light one. It might be argued that would have some bearing, but I think it's too remote.

Mr. Robinson: I have been prevented from showing it was a suspended sentence on occasion, your Honor.

The Court: Yes. I think it's not at all a universal practice, but I think the majority of courts



probably do not permit a showing of the length of the sentence. All right, bring in the jury, please.

(Whereupon, the following proceedings were had within the presence of the jury.)

ROBERT M. GRIMM,

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Salvini:

Q. Will you please state your name?

A. Robert Grimm.

Q. Where do you reside?

A. Sunnyside, Washington.

Q. How long have you resided at Sunnyside?

A. A little over three years.

Q. What is your occupation in that city, Mr. Grimm? [245]

A. I'm assistant manager of the bank, the Old National Bank branch there.

Q. That is the Old National Bank of Spokane?

A. That's right.

Q. How long have you been employed with that bank?

A. I've been with the bank since 1926.

Q. During this time that you've resided at Sunnyside have you had occasion to become acquainted with Melvin Waller, who sits next to me?

A. Yes.

Q. Would you state the basis of this acquaintance?

(Testimony of Robert M. Grimm.)

A. Well, I've had dealings with him in my capacity in the bank, and I've also known him in a social way.

Q. How long have you been acquainted with him?

A. Well, approximately the entire period that I've been in Sunnyside. I think it was just shortly after I was transferred to the branch in Sunnyside that I had my first dealings with him.

Q. Approximately the last two and a half, three years?

A. Well, I'd say probably three years. I've been there a little over three years.

Q. During this time have you had occasion to discuss with others of the Sunnyside community about Waller, who also knew him?

A. Yes. [246]

Q. From these discussions were you able to observe what his general reputation was in the community for honesty and as being a law-abiding citizen?      A. Yes.

Q. What was his reputation in the community as you have observed it?

A. Well, I would say he has a good reputation for honesty and fair dealing in business ways.

Mr. Salvini: That's all.

### Cross-Examination

By Mr. Erickson:

Q. Is he a customer of yours at the bank? Does he bank at your bank?      A. Yes, sir.

(Testimony of Robert M. Grimm.)

Q. How long has he been a customer at your bank?

A. Well, I don't know exactly, without checking the dates, but I would say approximately three years.

Q. He's a friend of yours?

A. Well, yes.

Q. And you're interested in helping him and doing anything you can to help him in this controversy?

A. Well, to the extent of anything that I could say that's the truth is concerned, yes.

Q. Do you know anything about his past?

A. Well, I understand that he was in the service, but I know nothing previous to that. [247]

Q. Do you know that he's been convicted of grand larceny in 1935?

A. No, I didn't know. I heard a rumor the other day, something to that effect, but I don't know anything about it.

Q. Did you hear that discussed in Sunnyside?

A. Not to any great length.

Mr. Erickson: That's all.

Mr. Salvini: That's all.

(Whereupon, there being no further questions, the witness was excused.)

H. W. FARWELL,

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

(Testimony of H. W. Farwell.)

Direct Examination

By Mr. Salvini:

Q. Will you please state your name?

A. H. W. Farwell.

Q. And where do you reside, Mr. Farwell?

A. Sunnyside, Washington.

Q. How long have you resided in Sunnyside?

A. Since 1942.

Q. That has been continuously since 1942?

A. Yes.

Q. What is your occupation or business in that community?

A. I'm a feed and seed dealer, retail basis, and manufacturer.

Q. Are you acquainted with Melvin Waller, who is seated next [248] to me?      A. I am.

Q. How long have you know Mr. Waller?

A. I've known him since approximately three years. I met him, I would say, within the first week after he arrived in Sunnyside.

Q. And during that time you've continuously resided in Sunnyside, is that right?

A. Myself, yes.

Q. What is the basis of your acquaintance with Mr. Waller?

A. Well, it was first business, because his firm does considerable trucking for me, and also personally, because I know him and have done a lot of dealings and been a lot of places with him, and know him quite well that way.

Q. Have you had occasion prior to last August

(Testimony of H. W. Farwell.)

23 to talk with others who also knew Mel Waller in the Sunnyside community?

A. Oh, yes, because in a little town everybody knows everybody.

Q. Were you able to observe what his reputation in that community was for honesty and truthfulness and being a law abiding citizen?

A. Well, in my business relationship with him and his firm, and he being the head of it, was very close, I found it excellent, and——

Mr. Erickson: Now just a minute; I move the answer be stricken. [249]

The Court: Well, I'll permit it to stand. I don't think you should go into more detail, though. He's got a good reputation, is the gist of it.

Mr. Salvini: That's all.

### Cross-Examination

By Mr. Erickson:

Q. You say you've know him since 19—, what?

A. I think he's been there approximately three years; I've known him within a week from the time he arrived, because his trucking firm does considerable work for me in hauling merchandise.

Q. You've heard his reputation discussed among people for honesty and integrity?

A. I could say yes, in a business way, because in business dealings that is very essential.

Q. Do you know that he's been convicted of grand larceny in 1935?

The Court: Just a minute; I think I'll object to the form of that question. Since reputation is in-

(Testimony of H. W. Farwell.)

volved I think you should ask if he's heard anybody discuss it.

Q. Have you heard anybody discuss his conviction of grand larceny in 1935?

A. There was some rumor about it very recently in the town, things like that go around in a town, but rumors are rumors. I heard some rumor about it, after these troubles, after this spud trouble that I'm here for today. We didn't give [250] that much consideration, because when you find a man that will work 12, 15, 20 and 30 hours straight through, that's very refreshing for a man to come back from the Army and work as he worked in his business.

The Court: I think you've answered the question now. Wait for another question.

Mr. Erickson: That's all.

Mr. Salvini: That's all.

(Whereupon, there being no further questions, the witness was excused.)

### ROBERT ADAMSON,

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Robinson:

Q. State your name, please.

A. Robert Adamson.

Q. Mr. Adamson, where do you reside?

A. I live in Grandview.

Q. Grandview? A. Yes.

Q. Did you reside there last August?



(Testimony of Robert Adamson.)

A. Yes, I did.

Q. Were you in August, 1948, employed by the Herrett Trucking Company? A. Yes, I was.

Q. You've been employed since that date, too, haven't you? [251] A. Yes.

Q. How long have you worked for the Herrett Trucking Company? A. Since June.

Q. Now, directing your attention to the month of August, 1948, what kind of hours were worked by the employees of the Herrett Trucking Company during that month?

A. Well, the hours are very irregular; I mean, you might work part of the time one day and part of the night the next day, anything like that; there was no regular hours.

Q. Were there many night operations and day operations both conducted?

A. Oh, yes; generally we ran from one into the other, or one on to the other; they were combined or separate; you might be working nights or days, it didn't make any difference.

Q. With reference to cross-state hauls with the trucks of the Herrett Trucking Company, did very many of those commence at night?

A. Yes, they did.

Q. What portion of the total hauls, in your estimate, would commence in the late evening?

A. I think most of them would.

Q. Most of them. Now, do you recall loading potatoes at the Simmons Warehouse on August 23?

A. Yes, I do.

(Testimony of Robert Adamson.)

Q. Who directed you to take a piece of equipment to the [252] Simmons Warehouse?

A. Mel; Mel Waller.

Q. When did he direct you to do that?

A. Sunday afternoon.

Q. Sunday afternoon; and he told you to have it there when?

A. It was early Monday morning, I think it was about 6:30, something like that.

Q. What kind of equipment was used?

A. I had a semi-truck trailer, and a semi-trailer, flat bed.

Q. Did that flat bed have any side boards of any kind on it?      A. No.

Q. Had you hauled any potatoes before?

A. Yes, I had.

Q. How did you load these potatoes?

A. I loaded them five high and three wide; the sacks were across the bed of the truck.

Q. Five high?      A. Yes.

Q. Why did you load them in that fashion, Mr. Adamson?      A. I always have.

Q. Had Mel Waller given you any specific instructions with reference to how to load this load?

A. No, he hadn't.

Q. Did you use a tarpaulin of some kind?

A. Yes, I did. [253]

Q. Where did the tarpaulin come from?

A. Well, I had the tarp on the flat bed; I had been hauling cement on that truck, anyway we always carry a tarp in case it rains, you can cover your load, and I used the tarp to cover the spuds to

(Testimony of Robert Adamson.)

hold them on; you put that many potatoes on a flat bed that size, it's the easiest way to put your load on and hold it on and tie it down so you don't lose anything.

Q. You used the way that was easiest to you, did you?      A. Well, it was the easiest to me.

Q. Did Mel Waller tell you to use the tarpaulin?

A. No, he didn't.

Q. Did he give you any specific instructions with reference to protecting the potatoes from sun?

A. No, he didn't; he asked me how come I was using the tarp. I told him it was the easiest way I could figure out to tie them on. That's all that was said.

Q. Where did you take the truck after the loading was completed?

A. Down to the Herrett Trucking Company shop.

Q. Did you leave it there?      A. Yes, I did.

Q. Why did you leave it there?

A. Well, I went down to get some help to unload it, and there wasn't anybody to help me at that particular time, and I [254] had been working since early that morning anyway, so Mel let me go on home; he said somebody else will unload it that night.

Q. Did Mel Waller give you any instructions about being secretive or careful or concealed in the loading of these potatoes?

A. No; couldn't hardly conceal them on a flat bed, anyway.

(Testimony of Robert Adamson.)

Q. Did you load another flat bed on Tuesday?

A. Yes, I did.

Q. Was a similar procedure followed then?

A. Yes, it was.

Mr. Robinson: That's all.

### Cross-Examination

By Mr. Erickson:

Q. Now, you're still employed by the company?

A. Yes, I am.

Q. And all you did was load this flat bed truck; you didn't drive any truck to the feed lot?

A. No, I didn't.

Q. Either the Williamson or the Waller feed lot?

A. No, I didn't.

Q. You didn't drive any truck to Portland?

A. No, I didn't.

Mr. Erickson: That's all.

(Whereupon, there being no further questions, the witness was excused.) [255]

J. D. SANDERS,

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

### Direct Examination

By Mr. Robinson:

Q. State your name, sir.

A. J. D. Sanders.

Q. And where do you reside?

A. Sunnyside.

(Testimony of J. D. Sanders.)

Q. Are you employed by the Herrett Trucking Company?      A. Yes, sir.

Q. How long have you been working for them?

A. Just about a year.

Q. Were you employed by them in August, 1948?

A. Yes, sir.

Q. In and around the time of August 23, 1948, Mr. Sanders, what procedure was followed with reference to the hours worked?

A. There was 24-hour service.

Q. 24-hour service?      A. Yes, sir.

Q. What does that mean with reference to the way you worked?

A. Any time of the day or night we were on call, and we run mostly at night.

Q. You ran your trucks mostly at night?

A. Yes.

Q. Did you operate vehicles on cross-state hauls or long hauls? [256]      A. Yes.

Q. Why did you start the trips at night, Mr. Sanders?

A. Well, one thing, the trucks would run cooler.

Q. Any other reasons?

A. Well, another thing, we'd be at our unloading place, the destination, at daylight the next morning, or 8 o'clock when they opened.

Q. Is there anything unusual in the trucking business about starting a trip at night?

A. No, sir.

Q. Are loads put on at night in the trucking business, in your experience?      A. Quite often.

(Testimony of J. D. Sanders.)

Q. Were you one of the drivers who drove a van truck to Portland with a load of potatoes on the evening of Tuesday, August 24, where you met Homer Waller?      A. Yes.

Q. Was there another driver?      A. Yes, sir.

Q. What was his name?      A. R. C. Smith.

Q. The two of you left Sunnyside on what day, do you recall?

A. It was on Tuesday evening of the 24th.

Q. When you got ready to start out with the load from the Herrett Trucking Company property, did you stop someplace [257] on your way out of town?

A. Not on the way out of town. We stopped at Goldendale to eat.

Q. Before you got out of town did you stop at anyone's house, do you recall?

A. Not that I recall.

Q. With reference to that trip, did Mel Waller at any time caution you or anyone in your presence to be secretive about the load of potatoes that you had?      A. No, sir.

Mr. Robinson: That's all.

#### Cross-Examination

By Mr. Erickson:

Q. How are you paid, Mr. Sanders?

A. For that trip?

Q. No; how are you paid by the Herrett Trucking Company?      A. By the trip.

Q. What do you get for a trip?

A. That all depends upon how far we go, sir.



(Testimony of J. D. Sanders.)

Q. What do you get for a trip that goes to Portland? A. \$28.00.

Q. And how are you paid, by company check or by cash?

A. Biggest part of the time it's a company check, yes.

Q. What do you mean, the biggest part of the time? Are you paid in cash some of the time?

A. This time, yes. [258]

Q. Is this the only time you were paid in cash?

A. Yes.

Q. You've always been paid by check before?

A. Yes.

Q. But for the trip of August 25 you were paid in cash? A. Yes.

Mr. Erickson: That's all.

#### Redirect Examination

By Mr. Robinson:

Q. Did you drive any of the Herrett Trucking Company trucks for any other personal trips for any of the officials of the company besides this one?

The Court: I think the form of that question is objectionable and suggestive.

Q. Did you ever drive a Herrett Company truck on any trip except this one which was not a regular commercial haul?

A. Yes; I hauled some hay from his brother-in-law down below.

Q. Did you for any officer of the company, though, that you remember of? A. No.

Mr. Robinson: That's all.

(Testimony of J. D. Sanders.)

### Recross-Examination

By Mr. Erickson:

Q. Just a minute; were you employed by the Herrett Trucking Company to take this truck to Portland?

Mr. Robinson: I object to that as calling for a conclusion of the witness. [259]

The Court: Well, he can answer it if he knows.

A. Well, there wasn't anything unusual about it, except after I got back I was paid in cash.

Q. There was no separate instructions that you were working for a particular man hauling this for a particular officer of the company, was there?

A. No.

Mr. Erickson: That's all.

### Redirect Examination

By Mr. Robinson:

Q. Who gave you the instructions about where to go, and when? A. Melvin Waller.

Mr. Robinson: That's all.

Mr. Erickson: That's all.

(Whereupon, there being no further questions, the witness was excused.)

### R. C. SMITH,

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

### Direct Examination

By Mr. Robinson:

Q. Your name is what? A. R. C. Smith.

(Testimony of R. C. Smith.)

Q. And where do you reside?

A. Sunnyside.

Q. Are you employed by the Herrett Trucking Company?

A. Yes.

Q. How long have you worked for them, Mr. Smith? [260]

A. About nine months.

Q. Were you employed by them in August, 1948?

A. Yes.

Q. What kind of hours did you work for the company in August, 1948, Mr. Smith?

A. Oh, it was on 24-hour call, any time.

Q. Was that the understanding for your employment during that time?

A. Any time a load is to go out, why, we took it.

Q. Did you drive with J. D. Sanders on a trip to Portland commencing Tuesday evening, August 24, 1948?

A. Yes.

Q. What time did you start that trip?

A. Oh, it was about 10 o'clock in the evening, about; something like that; maybe a little later.

Q. You were on standard time down in Sunnyside then, weren't you?

A. Yes, I believe we was.

Q. Was it unusual to start a trip at night at that time of the year in the commercial hauling business?

A. No, we usually do all the hauling at night.

Q. Usually do?

A. All the hauling at night in the summertime.

Q. I see. Mr. Smith, in making this haul did Melvin Waller at any time caution you or anyone in your presence to be [261] secretive about the trip

(Testimony of R. C. Smith.)

and not to tell anyone about it, or explain or talk about it to anyone?      A. No.

Q. Did you receive any tutoring or cautioning whatsoever with regard to it?      A. No.

Mr. Robinson: That's all.

### Cross-Examination

By Mr. Erickson:

Q. Now, Mr. Smith, how are you paid by the trucking company, by check?

A. Paid by check and cash, both.

Q. How many times have you been paid by cash?

A. Well, quite a few times.

Q. Who directed you to make this trip?

A. Mel.

Q. Melvin Waller?      A. Yes.

Q. And were you paid by cash or by check for this trip?      A. I'm pretty sure I got cash.

Q. How much did you get?

A. I think it was \$28.00; regular trip.

Mr. Erickson: That's all.

(Whereupon, there being no further questions, the witness was excused.)

Mr. Robinson: That's the drivers, your Honor. I'll [262] appreciate a recess at this time.

(Whereupon, the following proceedings were had at the bar, out of the hearing of the jury.)

The Court: How many more witnesses do you have?

Mr. Robinson: I think just one.

The Court: The one excused until tomorrow?

Mr. Robinson: No, one besides him. There's two stuck in the snow over in North Bend, Ross Lynch.

Mr. Erickson: They're character witnesses? We have three now, and one in the morning.

Mr. Robinson: Ross Lynch is in a different community.

Mr. Erickson: How many character witnesses does the Court permit?

Mr. Robinson: Unlimited?

The Court: I've never set a number; there's no set rule. I should think six would be ample.

Mr. Robinson: We don't intend to have more than six.

The Court: Usually about three is all we have, but I don't want to limit it too much in a case of this kind.

Mr. Erickson: Could we start at 9:30 in the morning, do you think?

Mr. Robinson: Did your Honor want to get through by noon?

The Court: Well, as shortly after as possible.

Mr. Robinson: Unless there's a lot of rebuttal we'll be through within fifteen minutes or half an hour at the most.

The Court: You'd want an hour on the side at least to argue this, or would three quarters of an hour be enough?

Mr. Robinson: Well, Salvini is going to argue a portion of it; it might be an hour, but not more than that.

Mr. Erickson: We couldn't possibly get through

by noon if we convened at 10 o'clock. We should discuss the instructions a little bit.

Mr. Robinson: 9:30 would be all right with me.

The Court: Yes, I think we'd better, perhaps.

(Whereupon, the following proceedings were had within the presence and hearing of the jury.)

The Court: We're going to finish this case tomorrow, members of the jury, and in order to submit it to you as soon as possible we'll come back at 9:30 instead of 10 o'clock. That's just a half an hour earlier than usual, and we'll have the argument and the court's instructions, and the case will be submitted to you, and of course, I never know, or you don't, how long it will take you to decide this matter, so you'd better come here prepared to stay for the duration, until the case is [264] decided, and tell your folks at home not to worry if you don't get home early. We'll adjourn until tomorrow morning at 9:30.

(Whereupon, at 4:30 o'clock p.m. the Court took a recess in this cause until Wednesday, February 16, 1949, at 9:30 o'clock a.m.)

Yakima, Washington,  
Wednesday, February 16, 1949,

9:30 o'clock a.m.

(All parties present as before, and the trial was resumed.)

(Whereupon, without the presence of the



jury, the Court discussed with counsel the instructions proposed to be given in this cause.)

(Whereupon, the following proceedings were had within the presence of the jury.)

S. A. ROSSIER,

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Salvini:

Q. Will you please state your name?

A. S. A. Rossier.

Q. And where do you reside, Mr. Rossier?

A. Sunnyside, Washington.

Q. How long have you resided there in that vicinity?

A. Well, I've been residing in and near Sunnyside since 1903; 46 years.

Q. And you do now reside in the city of Sunnyside? [265]      A. Yes, sir.

Q. What is your business or occupation in that community, Mr. Rossier?

A. Loans and insurance, principally.

Q. For how long have you been engaged in that business?      A. In Sunnyside, you mean?

Q. Yes.      A. Since 1943, in Sunnyside.

Q. Do you hold any public office in that community?      A. Yes, sir.

Q. What offices do you hold?

A. Mayor of the city of Sunnyside.

Q. Do you occupy any other public office?

(Testimony of S. A. Rossier.)

A. Justice of the Peace in Sunnyside Precinct.

Q. How long have you been Mayor of the city of Sunnyside?      A. Going on five years.

Q. And how long have you been Justice of the Peace of the Sunnyside Precinct?

A. Since 1943.

Q. Are you acquainted with the defendant, Melvin Waller?      A. I am.

Q. How long have you known Mr. Waller?

A. Since the early year 1946, would be the year.

Q. And since that time you have resided continuously in Sunnyside? [266]      A. Yes, sir.

Q. Have you had the occasion to discuss Waller with others in the Sunnyside community who also knew him?      A. Yes, sir.

Q. What was the nature and the extent of those discussions, Mr. Rossier?

A. Well, Mr. Waller came to Sunnyside I believe it was the year 1946, and as Mayor of the town, and as being in the business that I'm in, I tried to become acquainted with any new people that's coming into the town. They might some day come to me for business, and I feel that if he's a business man of any consequence, I should become acquainted with him as to his standing in the community. That's been my case. That's about all.

Q. From those discussions or inquiries have you been able to observe what Waller's general reputation is in Sunnyside for being honest and truthful, as a law-abiding citizen?

A. Well, I contacted men that I felt had con-

(Testimony of S. A. Rossier.)

tacted Mr. Waller, perhaps they did business with him at Sunnyside and one or two other places.

Q. What did you observe his reputation, that is, Waller's reputation, to be for truthfulness and honesty?

A. Mr. Waller's reputation in my opinion was—

Q. Not in your opinion, Mr. Rossier, but what did you observe to be his general reputation in Sunnyside as to honesty? [267]

A. It was above reproach. It was good in every respect.

Mr. Salvini: That's all.

### Cross-Examination

By Mr. Erickson:

Q. Did you make specific inquiry about Mr. Waller's past reputation?

A. Well, yes, around town and in Sunnyside.

Q. Did you hear the matter discussed that he had been convicted of grand larceny in 1935?

A. I got a rumor of that in the summer of 1948, was the first time that I got that rumor.

Q. That's the first time you knew about it?

A. Yes, sir.

Q. He's a customer of yours, isn't he?

A. He has transacted some business with me, yes, sir.

Q. And you want to help him in any way you can?

A. Well, as long as he was deserving of any assistance, if it was fair and just and equitable, why,

(Testimony of S. A. Rossier.)

I'd be glad to extend him any accommodation I could.

Q. Do you think that in spite of that discussion you heard about his grand larceny conviction in 1935, his present reputation is good?

Mr. Robinson: I object to that, your Honor.

A. Well, no, I did hear it was a rumor I received——

Mr. Robinson: Just a minute, Mr. Rossier. I object to that. In the first place it pertains to his [268] reputation now, which isn't the issue; the second one, "Do you think" calls for a conclusion of the witness.

The Court: I think it's argumentative; I'll sustain the objection.

Mr. Erickson: That's all.

Mr. Robinson: That's all.

(Whereupon, there being no further questions, the witness was excused.)

K. S. PORTER,

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

#### Direct Examination

By Mr. Salvini:

Q. Would you please state your name?

A. K. S. Porter.

Q. Where do you reside?

A. About two and a half miles south of Sunnyside.

(Testimony of K. S. Porter.)

Q. And how long have you resided at that location?      A. About eleven years.

Q. What is your occupation or business, Mr. Porter?      A. Farming and dairying.

Q. Your residence, then, is on a farm, is that correct?      A. Yes.

Q. How long have you been engaged in farming?

A. About eleven years, there.

Q. Have you had occasion to become acquainted with Melvin Waller, who is seated next to me? [269]

A. Yes, I have.

Q. How long have you known Mr. Waller?

A. Well, approximately two years, since he moved there.

Q. What has been the basis of that acquaintance?

A. Well, as neighbors, and borrowing a little back and forth, and I've sold him a little hay, and done a little hay cutting for him.

Q. You state you're neighbors. How close is your residence to Waller's residence?

A. Oh, he's across the track and on the opposite side of the road from me.

Q. Prior to August 23, 1948, have you had occasion to discuss with others in the Sunnyside community as to a Waller's reputation for——

A. Yes, I have.

Q. ——his reputation for honesty and being a law-abiding citizen?      A. Yes.

Q. What did you observe to be his reputation in that respect?      A. Well, it was very good.

Mr. Salvini: That's all.

(Testimony of K. S. Porter.)

Cross-Examination

By Mr. Erickson:

Q. He's a friend of yours, Mr. Porter?

A. Yes, he's a neighbor and friend.

Q. And did you hear the matter discussed that he had been convicted of grand larceny in 1935?

A. Well, I'd heard something to that effect just shortly after he came there.

Q. You heard that discussed in the vicinity of Sunnyside?      A. Yes.

Mr. Erickson: That's all.

(Whereupon, there being no further questions, the witness was excused.)

ALFRED M. PULLEY,

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Salvini:

Q. Will you please state your full name?

A. Alfred M. Pulley.

Q. And where do you reside?

A. Sunnyside.

Q. How long have you resided there?

A. Eight years.

Q. What is your business or occupation in the city of Sunnyside?      A. Automobile dealer.

Q. Do you hold any public office in that city?

A. Yes, at the present time on the city council.

Q. And how long have you occupied that position?      A. This is going on the sixth year.



(Testimony of Alfred M. Pulley.)

Q. Have you had the occasion to become acquainted with Melvin Waller, who is seated next to me? [271]

A. Yes, I have.

Q. How long have you known Melvin?

A. I've known about him since April, 1945.

Q. What was the basis of this acquaintance; how was it you became acquainted?

A. Became acquainted with him through the sale of a truck line to he and his brothers.

Q. Were you a prior owner of the Herrett Trucking Company?

A. I was a partner in the ownership of Herrett Trucking Company prior to the sale to the Wallers.

Q. Have you had the occasion to discuss with others in the Sunnyside community who also knew Waller, as to his reputation for honesty and being a law-abiding citizen?

A. Yes, I have, many occasions.

Q. What was the extent and nature of those discussions?

A. Well, in the first place, the trucking line operations were sold to Mr. Waller's brothers and himself on a contract basis, that is, it wasn't all settled for at the time, therefore we had a natural reason to check into the history of them, to establish the credit risk.

Mr. Erickson: I'm going to object to any specific credit information.

The Court: Yes, I think you shouldn't go into that. The general reputation is pertinent.

Q. Did you have occasion to discuss his reputa-

(Testimony of Alfred M. Pulley.)  
tion in the city [272] of Sunnyside or in the Sunnyside community?

A. Yes. The most natural avenue that we had, the opportunity and the occasion normally arose to discuss his character and integrity, was by reason that the trucking line operations even after it was sold was still housed in our same building, and while they were in the back part of the building, we being in the front part of the building, customers doing business with them would come in the front part and start discussing their business with us before they found out that they were in the wrong office, and during such discussions we naturally had an opportunity to hear of what other people's feelings were toward them.

Q. What did you observe to be his reputation in the Sunnyside community as to being truthful and honest and a law-abiding citizen?

A. Well, in all cases without exception, why, it was good.

Mr. Salvini: That's all.

#### Cross-Examination

By Mr. Erickson:

Q. Did you hear the fact discussed that he had been convicted of grand larceny in 1935?

A. I didn't hear you.

Q. Did you hear the fact discussed that he had been convicted of the crime of grand larceny in 1935?

A. No, I haven't heard it discussed specifically.

Q. You haven't heard that discussed? [273]

(Testimony of Alfred M. Pulley.)

A. Yes, I heard about it; not discussed.

Q. When did you hear about it?

A. At the time that we checked into their past for the purpose of selling the truck line.

Q. Is he indebted to your company now, at the present time?

A. No, other than just an open account, regular monthly account, which is always——

Q. You do business with him, your firm?

A. Right.

Mr. Erickson: That's all.

(Whereupon, there being no further questions, the witness was excused.)

ED WALLER,

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination

By Mr. Robinson:

Q. State your name, please.

A. Ed Waller.

Q. Where do you reside, Mr. Waller?

A. In Sunnyside, Washington.

Q. Are you an officer of the Herrett Trucking Company?      A. Yes.

Q. What office do you hold?

A. Second vice president.

Q. Are you familiar with the workings and transportation schedules of the Herrett Trucking Company during the [274] summer months of 1948?

A. Yes.

(Testimony of Ed Waller.)

Q. Was any regularly hourly schedule operated by any of the equipment or vehicles of the Herrett Trucking Company during that time? A. No.

Q. What hours are worked in your commercial trucking business there?

A. Any hour of the day or night. Whenever the truck is available and there's a load, it's unloaded or loaded.

Q. What portion of the handling of the commodities is customarily done at night in your business?

A. Well, quite a large proportion; maybe over half.

Q. What part of the hauling, as far as the trips are concerned, is made at night, Mr. Waller?

A. There must be 90 per cent of the driving done at night.

Q. Were potatoes loaded out of commercial warehouses during the hours of darkness during the potato digging season last year?

A. Quite frequently.

Q. At what warehouses did your firm load out potatoes after the hours of darkness?

A. At Phipps Warehouse in Sunnyside, and at Pacific Fruit in Wapato, and Balcom and Moe, I believe, in Grandview.

Q. Now, did you make a trip to Yakima on Wednesday, August 25? [275] A. Yes.

Q. 1948, that is. For what purpose did you come to Yakima?

(Testimony of Ed Waller.)

A. In the regular line of business, solicitation, mostly.

Q. Solicitation of what?

A. Solicitation of business for the company.

Q. Now, did Melvin Waller also ask you to do something for him when you were up here?

A. Yes.

Q. What did he ask you to do?

A. He asked me to buy some surplus potatoes.

Q. And did he give you some kind of money?

A. He gave me a personal check.

Q. Was the payee filled in, that is, the person to whom the check was payable, in that check?

A. It was made out to me.

Q. What did he tell you to do?

A. He told me to go to the courthouse and buy 150 tons of the surplus potatoes.

Q. What did you do, Ed?

A. I went up to the courthouse and found that I had to have a certified check.

Q. He didn't know that you had to have a certified check?      A. No.

Q. Did you know where to go at the courthouse?

A. Well, I found out from the register in the courthouse. [276]

Q. And what did you do then?

A. I got the check cashed and got a post office money order made out to the Treasury Department, and took that back up.

Q. They told you you had to have either a post office money order or a cashier's check, is that right?      A. That's right.

(Testimony of Ed Waller.)

Q. Then you went back up to the office of Mr. Quinn or someone in the Old Courthouse that was handling the sale of the potatoes, is that right?

A. That's right.

Q. I hand you plaintiff's exhibit 12, and ask you if you recognize the signature on that document as one you have seen before?

A. That's right, I signed that.

Q. You signed that for Melvin E. Waller?

A. That's right.

Q. At the time that you signed that, Mr. Waller, did anyone read it to you?      A. No.

Q. Did anyone show you a form FV111, Plaintiff's Exhibit No. 13?      A. No.

Q. Did anyone inform you that ownership of potatoes was claimed to be retained by the Commodity Credit Corporation after they had been delivered to the purchaser?      A. No. [277]

Q. About how long were you in this office where you arranged this purchase?

A. A very few minutes.

Q. Was this paper that is plaintiff's exhibit 12 that you signed filled out when you signed it, other than the mimeographing that's on here?

A. There was parts of it filled out, but there was some parts still missing.

Q. Did you sign a lot of copies of it?

A. There was five or seven.

(Whereupon, certificate of purchase by Melvin Waller dated August 25, 1948, was marked Defendant's Exhibit No. 18 for identification.)

Q. I hand you defendant's identification 18, and ask you if you have seen that before?



(Testimony of Ed Waller.)

A. Yes, that's the only receipt I got.

Q. Is that the only thing that was given you?

A. That's right.

Q. This was given you at that time? A. Yes.

Mr. Robinson: I'll offer it.

Mr. Erickson: No objection.

The Court: It will be admitted.

(Whereupon, Defendant's Exhibit No. 18 for identification was admitted in evidence.) [278]

[Printer's Note: Defendant's Exhibit No. 18 is set out in full at page 329 of this printed Record.]

(Whereupon, Mr. Robinson read Defendant's Exhibit No. 18 to the jury.)

Q. About what time in the afternoon did you receive that form, to the best of your recollection, on August 25?

A. It must have been around 3 o'clock, a little after; maybe not that late.

Q. What did you do with it after you got it?

A. Well, I proceeded with the rest of the business that I had in Yakima, and went back to Sunny-side.

Q. What did you do with that form?

A. I laid it on the desk in our office.

Q. In your office down there?

A. That's right.

Q. Did you have some occasion at a later time to discuss the transaction in which you had been engaged with Melvin Waller?

A. It was quite some time later, several days be-

(Testimony of Ed Waller.)

fore I had a chance to talk to Mel regarding that.

Q. What discussion did you have at that time?

Mr. Erickson: To which we object as too remote from the time in question.

The Court: Overruled; go ahead.

Q. Generally, what discussion did you have in regard to this matter of these potatoes at a later time with Melvin Waller, Ed? [279]

A. I told Mel the procedure up here of having to get the check cashed, and the procedure that went on in the office in the courthouse, and how the thing worked out down there when a truck was to be loaded out, and so forth, and just the general procedure, and told him of having signed his name on the official looking documents, on whatever was necessary. I didn't read them at the time.

Q. I see. Now, Mr. Waller, to change the subject, with reference to the Herrett Trucking Company trucks, do they have signs on them indicating ownership?

A. Yes, there's identification on them.

Q. Is there some requirement of that by your state and federal common carrier permits?

A. The department of transportation requires that.

Q. Are those signs on your van bodies, your van trailers? A. No, just on the tractors.

Q. Where are the signs located on the tractors?

A. On the doors.

Q. Are they signs that are hard to read, small type, or are they large signs easily read?

A. They're large signs that you can read a

(Testimony of Ed Weller.)

block away; I think the requirement is 300 feet from the truck.

Q. You have to be able to read them 300 feet away?      A. That's right.

Mr. Robinson: That's all. [280]

Cross-Examination

By Mr. Erickson:

Q. Mr. Waller, is it the function of your trucking company to transfer potatoes from graded sacks to plain sacks? Is that a normal function of your company?

Mr. Robinson: Object to that as improper cross-examination.

The Court: Well, I'll overrule the objection.

A. No, that isn't; whatever is in the line of our business; if we have to pick up spuds out of the field, we pick up out of the field; if we have to load grapes from vineyards, we load from vineyards on trucks, whatever is necessary.

Q. Do you ordinarily change commodities from one sack to another?

A. No, not necessarily, unless the shipper requires it for some reason.

Q. That is an unusual procedure, then, to dump potatoes out of branded sacks into plain sacks?

The Court: I think he's answered that, that they don't usually do it.

Q. You signed these forms without reading them, did you?      A. That's right.

Mr. Erickson: That's all.

Mr. Robinson: That's all.

(Whereupon, there being no further questions, the witness was excused.) [281]

Mr. Robinson: The defense rests.

Mr. Erickson: We have one rebuttal witness.

KENNETH ROBINSON,

called as a witness for the plaintiff, in rebuttal, being first duly sworn, testified as follows:

Direct Examination

By Mr. Erickson:

Q. Your name is Kenneth Robinson?

A. That's right.

Q. What is your employment with the Herrett Trucking Company at the present time, Mr. Robinson?

A. Secretary-Treasurer of the company.

Q. You keep the books?

A. I am directly responsible for the supervision of the books, yes.

Q. Pursuant to a subpoena, and at my request, did you bring a book of the Herrett Trucking Company to court this morning showing the disposition of gasoline to trailer TLE 1374 and TKE license 12310? A. Yes, that's correct.

Q. You have the official book of the Herrett Trucking Company there with you now?

A. There's only one discrepancy, and that is that——

Q. No, is that the official book?

(Testimony of Kenneth Robinson.)

A. This is the official book of the Herrett Trucking Company, yes.

Q. And is that a corporation? [282]

A. The Herrett Trucking Company is a corporation.

Q. Are you a stockholder in it?

A. I'm a stockholder.

Q. And will you refer to that page that I marked? I'll refer you to—what do you call this book?

A. Trip record report.

Q. I'll refer you to the trip record report, of the page marked Federal No. 25, beginning July, 1948, and we'll mark that page for identification.

(Whereupon, a page of the book was marked Plaintiff's Exhibit No. 19 for identification.)

Q. Handing you plaintiff's identification 19, I'll ask you what that page purports to show, Mr. Robinson?

A. That shows the gasoline consumed by what we call our Federal truck number 25.

Q. And that's the van number which I read to you a moment ago is it not, license number TLE 1374 and TKE 12310?

A. Well, I can reasonably say that, but under oath I wouldn't know, for sure, because we don't keep track of our trucks by license numbers.

Q. Does that indicate a truck going to Portland, Oregon, on August 24 or 25, 1948?

A. Yes, it does.

Q. And does that record indicate that that truck was on company business at the time? [283]

(Testimony of Kenneth Robinson.)

A. No, it does not indicate that it was necessarily on company business.

Q. Is there any indication there that it was on private business?

A. There's no indication here that it was on private business.

Q. It's listed with the official trips that that truck made to other destinations throughout the state, is it not?      A. That's right.

Q. And there's no distinction in that trip to Portland than any other trip the truck has made?

A. There's no other difference.

Q. Is there any indication in your record about payment for 100 gallons of gas?

A. There isn't anything in this book that shows that, no.

Q. You have no books or records to show the payment to the trucking company by Melvin Waller of \$25.00 for 100 gallons of gas for a trip on or about August 25, 1948, have you?

A. I haven't in this book, no.

Q. You haven't in any book, have you?

A. No, I haven't.

Mr. Erickson: That's all. First I want to offer this.

Mr. Robinson: No objection.

The Court: Admitted. [284]

(Whereupon, Plaintiff's Exhibit No. 19 for identification was admitted in evidence.)

[Printer's Note: Plaintiff's Exhibit No. 19 is set out in full at page 330 of this printed Record.]



(Testimony of Kenneth Robinson.)

Cross-Examination

By Mr. Robinson:

Q. What procedure was followed for the adjustment of the gasoline accounts?

A. I don't understand you.

Q. Well, how did you—when gasoline was purchased individually by officers or employees of the company, or arranged for, how was it handled?

A. We have in the company a petty cash fund, naturally, and what I call a cash box, and we keep a record at our gas pumps on our islands when the trucks gas up. When an individual in the corporation, or even an employee, wished to use gasoline from those pumps, they draw the gasoline from the pumps, put it on a slip that's on a tab out in front of the company, and they put a charge after it, or put their name down, and the bookkeeper checking the pumps the next morning draws up an I. O. U. slip when somebody shows for gasoline or anything of that nature, and it's put in the cash box, and at the end of the week, normally, we take all those I.O.U.'s out and take them from their check when they're being paid. That money is normally put back into the cash box. I don't remember this particular instance, but——

Mr. Erickson: I submit the question has been answered.

The Court: Yes.

Q. What procedure occurred with reference to the I.O.U.'s, or with reference to the slips that

(Testimony of Kenneth Robinson.)

you used to record the gasoline? Do you keep them, or what do you do with them?

A. Well, after the entry is made in the book we have no more use for the slips, and anybody that owes anything for the cash box just pays money for it, and it goes back into the cash box.

Q. How do you adjust the accounts of the officers?

A. Well, I naturally am responsible for the cash that's in that cash box, and I usually check it up once every two or three months, and when I do that I satisfy at least one or possibly all the members of the company that naturally I'm not absconding with the cash of the company, and if they're satisfied, entries are made and the slips are thrown away.

Q. Do you adjust the accounts with the officers periodically, every two or three months?

A. That's right.

Q. You've adjusted the accounts, then, for last August?

A. Oh, definitely, by this time, surely.

Q. And in the ordinary course of your procedure, then, you destroy these charge and credit slips that are personal to the officers and employees?

The Court: That's very leading, and I think he's [286] already testified to it.

Mr. Robinson: It's cross-examination, your Honor.

The Court: Well, he's really your witness in

(Testimony of Kenneth Robinson.)

effect, I think, and you shouldn't lead him too much.

Mr. Robinson: I'm trying to make this clear.

The Court: He's already testified to that, that he throws the slips away. Go ahead.

Q. Do you keep any permanent record of these adjustments between the officers and employees?

A. Not after it's paid back to the cash box.

Q. With reference to the Exhibit No. 19, does this show all trips taken by any particular piece of equipment, whether it is used in personal business for officers, or the company business?

A. Every trip that's made on the truck is in that book, regardless of whether it's personal or otherwise.

Q. Every trip that's made by the individual piece of equipment?      A. That's right.

Q. So from the exhibit, Plaintiff's Exhibit 19, can you determine whether a trip made to Portland on the 24th or 25th is a personal trip or a company trip?

A. I can't tell whether it's a personal or a company trip.

Q. Do you make a different entry in that book whether it's a personal trip or a company trip?

A. No, I don't.

Mr. Robinson: That's all.

#### Redirect Examination

By Mr. Erickson:

Q. Well, now, do the officers of this company use this equipment for personal purposes, each officer

(Testimony of Kenneth Robinson.)

takes a piece of equipment when he wants it for his personal use?      A. It's not uncommon, no.

Q. That's a frequent occurrence in that company?

A. I wouldn't say it was frequent, no, but it is done.

Q. And the officer that takes the equipment pays nothing to the company for the use of the equipment?      A. He pays the expenses involved.

Q. Nothing for the wear and tear, the insurance, or anything else?

A. No, there's no depreciation, it's not broken down to fine points of depreciation, no.

Mr. Erickson: That's all.

#### Recross-Examination

By Mr. Robinson:

Q. How many people in this corporation; how many stockholders?      A. Four.

Q. Their names?

A. Melvin Waller; Ed Waller, Homer, and myself, Kenneth Robinson.

Q. You own all the stock of the company?

A. That's correct. [288]

Q. And you're the officers of the company?

A. I'm an officer.

Q. You four are the officers of the company?

A. I have to qualify one statement; we have one other person that has a thousand dollars worth of stock in the company, by the name of William F. Herrett.

Q. What's the total capitalization?

(Testimony of Kenneth Robinson.)

A. The total allowed capital is \$75,000.00.

Q. He has one thousand dollars worth of stock?

A. Yes.

### Redirect Examination

By Mr. Erickson:

Q. You talked to Mr. Robinson about this case this morning?

A. I came in with Mel Waller, yes.

Mr. Erickson: That's all.

### Recross-Examination

By Mr. Robinson:

Q. You talked to the District Attorney before you took the stand?

A. I was subpoenaed by telephone, and I reported to the sheriff's office and talked to Mr. Erickson.

(Whereupon, there being no further questions, the witness was excused.)

Mr. Erickson: The **Government rests**.

(Whereupon, there being no further testimony or evidence, counsel for the plaintiff and defendant presented their arguments to the jury.) [289]

### COURT'S INSTRUCTIONS TO THE JURY

The Court: Now, ladies and gentlemen of the jury, it is my duty to instruct you as to the law governing this case. It is your duty, as jurors, to follow my instructions and to apply the law so

given to the facts as you find them from the evidence before you.

The jury must accept the instructions of the Court as comprising together a complete and correct statement of the law governing the case. Do not single out one instruction alone as stating the law, but consider the instructions as a whole.

You are here for the purpose of trying the issues of fact presented by the allegations of the indictment, and the denial by a plea of not guilty made by the accused. You are to perform this duty without bias or prejudice as to either party, and without sympathy for the accused. The accused and the public expect that you will carefully and dispassionately consider all the evidence, follow the law as stated by the Court, and reach a verdict just to each side, regardless of what the consequences may be.

An indictment is simply a legal accusation charging a defendant with the commission of a crime. It is not evidence against the accused, and does not create any presumption or permit of any inference of guilt. A defendant is presumed to be innocent of any crime. This presumption of innocence [290] continues throughout the trial, and is sufficient to acquit him unless the presumption is outweighed by evidence satisfying you beyond a reasonable doubt of the defendant's guilt.

A reasonable doubt is a fair doubt based upon reason and common sense, and arising from the evidence or lack of evidence in the case. It is rarely possible to prove anything to an absolute



certainty. A reasonable doubt exists whenever, after full and impartial consideration of all the evidence in the case, the jurors do not feel satisfied to a moral certainty that the defendant is guilty of the charge.

The requirement that a defendant's guilt be proved beyond a reasonable doubt is to be considered as included in each of these instructions which I shall give you.

The law on which the indictment in this case is based, members of the jury, and which it is alleged has been violated here, so far as it is pertinent in this case, reads as follows; I am reading from section 714m of Title 15 of the United States Code:

“Whoever shall willfully steal, conceal, remove, dispose of, or convert to his own use or to that of another any property owned by \* \* \* the Corporation”

and that means the Commodity Credit Corporation;

“shall upon conviction thereof be punished”

in the manner that the law provides. In order to find the [291] defendant Melvin E. Waller guilty of the charge against him in the indictment, you must find from the evidence beyond all reasonable doubt the existence of each of the following elements: One, that Melvin E. Waller either stole or removed or converted to his own use certain Irish

potatoes; two, that the potatoes were then owned by the Commodity Credit Corporation; three, that the defendant acted with the intent to deprive the owner of the potatoes of the property. If you find from the evidence that the government has failed to establish either or both of these elements, or any of them, beyond a reasonable doubt, then you will acquit the defendant, but if you find that the government has established the existence of all three elements beyond a reasonable doubt, then it is your duty to convict the defendant of the charge in the indictment.

In order that you may find that the defendant stole, removed, or converted potatoes to his own use, you must find his action was willful and intentional as distinguished from inadvertence and mistake. Ordinarily a person is presumed to intend what he does. You are instructed that the law presumes every man intends the natural consequences of his own actions, and intent may be presumed if it is shown such actions were part of his plan or scheme to violate the law as charged. The evidence of intent may be shown by the actions of the parties concerned and the actual circumstances, as well as by direct [292] evidence. It is impossible to enter into the mind of the defendant and determine the intent with which he acted, or the purpose he had, or the knowledge he possessed; therefore it is proper for you to determine, under the evidence, the knowledge and intent he had and the purpose, from the evidence and all the facts and circumstances shown by the evidence.

You are instructed that potatoes acquired by the United States Department of Agriculture, Production and Marketing Administration, are owned by the Commodity Credit Corporation, and title to the potatoes does not pass to the purchaser until the potatoes delivered are actually fed to livestock or processed into feed for livestock, and in this case, the potatoes purchased by Charles F. Williamson pursuant to his contract remained the property of and were owned by the Commodity Credit Corporation until actually fed to livestock or processed into livestock food. The Commodity Credit Corporation is a corporation chartered by the United States to purchase and dispose of surplus agricultural commodities.

If you find from the evidence in this case that the defendant did steal or convert to his own use potatoes which were not his, but not known to the defendant to be owned by the Commodity Credit Corporation, and the potatoes were owned by the Commodity Credit Corporation, the defendant would nevertheless be guilty of stealing or converting to his own use the property of the Commodity Credit Corporation. In other words, [293] if the defendant intended to steal or convert certain property which he knew was not his, and did steal or convert it, and it later should develop that the property was the property of the Commodity Credit Corporation, then the defendant would nevertheless be guilty of the crime charged, although he did not know at the time that the property was the property of the Commodity Credit Corporation.

You are further instructed that it is not necessary that the defendant himself did do all of the acts charged against him in the indictment, but if the defendant either himself did the acts charged, or procured others to do part of the acts charged therein, you should nevertheless convict the defendant if you find otherwise that he is guilty under the instructions I have given you. If you find that the defendant knowingly procured others to do parts of the acts charged, he would be guilty as the principal.

To steal, as used in the statute and in this indictment, means to take and carry away the personal property of another with intent to appropriate it to the use of the taker, and with intent to deprive the owner thereof.

You as jurors are the sole judges of the credibility of the witnesses and the weight to which their testimony is entitled. A witness is presumed to speak the truth. However, this presumption may be outweighed by the manner in which the witness testifies, by the character of the testimony given, or [294] by contradictory evidence. You should carefully scrutinize the testimony given and all the circumstances under which each witness has testified. Consider each witness's intelligence, demeanor, and manner while on the stand, and the relationship he may bear to each side of the case. Consider also the manner in which he may be affected by the verdict, the extent to which he is supported or contradicted by other evidence, and every

other matter which tends to indicate whether he is worthy of belief.

If a witness is shown to have willfully testified falsely concerning any material matter, you have a right to distrust his other testimony, and you may reject all the testimony of that witness which is not supported by other credible evidence.

A defendant who wishes to testify is a competent witness, and a defendant's testimony is to be judged in the same way as that of any other witness.

There has been admitted in evidence for your consideration evidence of the conviction of the defendant of a certain offense in the past. It's sole purpose was to impeach or discredit the defendant as a witness. You are to consider it only insofar as it may affect the credibility of the defendant as a witness and the weight and value to be attached to his testimony. It is not to be considered as evidence of the commission of the offense charged in the indictment in the present case. [295]

Evidence also has been admitted of the good reputation of the defendant for honesty and fair dealing in the community in which he resides. It is to be considered by you, together with all the other evidence in the case, in determining the guilt or innocence of the accused. Of course, if you are convinced beyond a reasonable doubt of the guilt of the accused, evidence of good reputation alone would not entitle him to acquittal.

In your consideration of the evidence you are not limited to the bald statements of the witnesses. On the contrary, you are authorized to draw from the



facts proved such inferences as seem justified in the light of your experience.

You should distinguish carefully between what has been testified to by the witnesses and what has been said by the attorneys. The arguments are designed to assist you in passing upon and finding the facts, but the statements and arguments of counsel are not evidence, and are not to be regarded as such. You are likewise instructed to disregard entirely any and all comments made by the Court in ruling on questions of evidence or in talking to counsel or admonishing them throughout the trial. That, as I told you before, is merely the functioning of the Court in seeing that the trial proceeds in an orderly way according to the rules which are applied here, and all those comments I have made are to be disregarded by you entirely. You are to consider only the [296] evidence before you, that consists of the sworn testimony of the witnesses and the exhibits received in evidence.

There is nothing peculiar or mysterious in the way a jury is to consider the proof in a criminal case. You are expected to use your good sense, consider the evidence only for those purposes for which it has been admitted, and give it a reasonable and fair construction.

I have no said anything to you about the punishment which the law provides in the event of conviction. The punishment is a matter exclusively within the province of the court. It is not to influence your deliberations in any way.

The verdict must represent the considered judgment of every juror. In order to reach a verdict, it



is necessary that each juror agree thereto; your verdict must be unanimous.

It is your duty to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to your individual judgment. Each of you must decide the case for yourself, but do so only after a consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to change an opinion when convinced it is erroneous, but do not surrender your honest convictions as to the effect or weight of evidence solely because of the opinion of other jurors, or for the mere purpose of returning a verdict.

Upon retiring to the jury room you will select one of your [297] number to act as foreman. Your foreman will preside over your deliberations, and be your spokesman in court. You will take with you to the jury room the indictment, the exhibits, and a form of verdict which has been prepared for your convenience. Omitting the formal heading, it reads: "We, the jury in the above-entitled cause, find the defendant" and a blank space, "guilty as charged in the indictment." If you find him not guilty, simply write in the word "not". The verdict is prepared in that way merely for convenience, and is not intended to indicate, of course, what your verdict should be.

The jury will just step out for a moment while we have other short proceedings in your absence.

(Whereupon, the following proceedings were had without the presence of the jury.)

The Court: You may take your exceptions now.  
Mr. Robinson: First, I noticed I omitted to make

a motion for judgment acquittal. I don't know any reason why that can't be made now. I thought I'd make it.

The Court: Yes, the record may show that the defendant's motion for acquittal has been renewed. I assumed you would renew it.

Mr. Robinson: I had a note on it.

The Court: Well, the record may show that you renewed it at the close of all the evidence, and that the Court at this stage is reserving decision on the motion in accordance with [298] the provisions of Rule 29b of the Rules of Criminal Procedure.

Mr. Robinson: Yes. The defendant at this time excepts to the giving—you don't have those numbered, do you?

The Court: No, I don't have them numbered. I didn't give out copies of these, because I didn't have them prepared. Is it one that was proposed by the government?

Mr. Robinson: Yes, the one that states "property"—

The Court: I think those are numbered by pencil.

Mr. Robinson: Yes, number 2 is the one in pencil.

The Court: I want to assist you in making your exceptions. Then you can refer to them as pencil numbered instructions.

Mr. Robinson: The giving of pencil numbered instruction 2 of the plaintiff's requested instructions on the following points and on the following grounds: First, that said instruction is erroneous in instructing the jury that the potatoes acquired by the United States Department of Agriculture, Production and Marketing Administration, are property of the Com-

modity Credit Corporation, because there is no evidence to that effect, and no factual basis upon which that conclusion could be drawn.

The Court: Pardon me for interrupting, but I interlined there "owned by" and you want to except to that too, I presume; I think it was in that one.

Mr. Robinson: Oh, yes, it is, and owned by, the words I quoted, Production and Marketing Administration, and are owned [299] by the Commodity Credit Corporation; second, an exception to the instruction that the title to the potatoes does not pass to the purchaser until the potatoes delivered are actually fed to livestock or processed into feed for livestock; third, an exception to the instruction that in this case the potatoes purchased by Charles F. Williamson pursuant to his contract to purchase potatoes for livestock food remained property of and were owned by the Commodity Credit Corporation until actually fed to livestock or processed into livestock food. Exception to those is based upon the ground that the instructions are without legal foundation or basis, and remove a vital and fundamental factual issue from the jury's consideration, to the prejudice of the defendant. Further exception is made to the sentence "the Commodity Credit Corporation is a corporation chartered by the United States to purchase and dispose of surplus agricultural commodities, for the reason that the statement is incomplete and therefore not a correct statement with reference to said corporation. That's the only exception, your Honor.

The Court: Do you have any suggestions to make, Mr. Erickson?

Mr. Erickson: No, I haven't.

(Whereupon, the following proceedings were had within the presence of the jury.)

(Whereupon, Irene Keenan and C. W. Carlile were sworn as [300] bailiffs.)

The Court: I think you should take the jury to lunch before they start deliberating. You will retire to consider your verdict, ladies and gentlemen.

(Whereupon, at 12:15 o'clock p.m., the jury retired to deliberate upon its verdict.)

(At 2:10 o'clock p.m., the defendant and his counsel Mr. Robinson being present, the United States Attorney, Mr. Erickson, being present, the following proceedings were had without the presence of the jury.)

The Court: I have grave doubts about this plaintiff's requested instruction number 2. I'm afraid I didn't get the full purport of it when I read it and gave it, and I recall that there was no discussion of it when I discussed the instructions with counsel, defendant's counsel didn't comment on this particular instruction or object to it, although he did object to another instruction that the Court then decided not to give, and if I got the purport of the exception as it was made by counsel as he stood very close to the table here, it was not what I expected it to be. I think your exception was worded, Mr. Robinson, that it was withdrawing factual issue from the jury. Was that the exception that you took to the instruction?

Mr. Robinson: I tried to take the exception that your Honor was instructing the jury that the Com-

modity Credit [301] Corporation was the owner of the property.

The Court: And that that took a factual issue from the jury?

Mr. Robinson: Well, and was not the correct statement of it. I don't think I intended to raise any new issue from the one that was in the motion for judgment of acquittal.

The Court: Well, the vice of this instruction, I'm afraid, is that it isn't just putting forward the theory that if title is reserved, that that indicates that the Commodity Credit Corporation has ownership. It's a direct factual instruction to the jury that the Commodity Credit Corporation was the owner of these potatoes, and your exception covered that, and your argument didn't cover it, of course, but you didn't object to this instruction at all, you didn't call that to the court's attention when I was discussing the instructions with you.

Mr. Robinson: I'm sorry; I knew your Honor had decided that issue——

The Court: Not that issue; your exception is I'm taking a factual question from the jury. I didn't get your exception very clearly. I think it's the function of the jury to examine these documents and determine whether the title was withheld. I'm afraid I'm not justified in instructing the jury that one of the essential elements of this offense is that the Commodity Credit Corporation owned these potatoes, and [302] then turn around and instruct them that the Corporation did own the potatoes.

Mr. Robinson: I'm not sure I agree with your Honor on that, although it seems to be an argument



for the government, because we presented on motion as a matter of law that the Commodity Credit Corporation did not own them, and your Honor decided that they did.

The Court: That's the thing I think if you were frank with the Court you should have called to my attention. You didn't object to that at all. I propose to call the jury back and recall that instruction and give them another one in lieu of it. I'm going to instruct them a little more fully what the Commodity Credit Corporation is, and instruct them if they find these potatoes were acquired by the Commodity Credit Corporation pursuant to its program of stabilizing farm income and prices, and such potatoes were sold and delivered over to Charles F. Williamson by and through the Commodity Credit Corporation, an agent of the United States, to be fed to livestock, and if the jury further finds that by the terms of the contract title was reserved and did not pass to the purchaser until the potatoes were actually fed to livestock or processed into feed for livestock, then they will be justified in concluding that the potatoes were actually owned by the Commodity Credit Corporation until fed or processed. I don't want error to get into the record that pertains to the merits [303] of the case. I'm perfectly willing for you to reserve your point. I don't like counsel to, I won't say put traps into the record, but leave them there once they get there.

Mr. Robinson: How should the exception have been taken? I intended to raise the point by the exception I took.

The Court: Read that exception.



(Whereupon, the reporter read as follows: "Exception to those is based upon the ground that the instructions are without legal foundation or basis, and remove vital and fundamental factual issue from the jury's consideration, to the prejudice of the defendant.")

The Court: What I'm talking about there, I said I propose to give these instructions, you didn't raise any objection to this on the ground it took the fact issue away from the jury.

Mr. Robinson: I thought the taking away the fact issue from the jury was the way to except from an instruction your Honor had previously decided on. I don't mean to put a trap into the record.

The Court: Well, you could see two different things there, certainly. Bring in the jury.

(Whereupon, the following proceedings were had within the presence of the jury.)

The Court: Now, members of the jury, I don't want you to tell me how you stand, or what you've done at all, except I [304] want you to say whether or not you have reached a verdict.

Foreman: We haven't agreed, your Honor.

The Court: I called you back in here because during the recess, in looking over one of the instructions I gave to you, I've come to the conclusion it's not accurate, it's erroneous. I want you to disregard it. That instruction reads: "You are instructed that potatoes acquired by the United States Department of Agriculture, Production and Marketing Administration, are owned by the Commodity Credit Corporation, and title to the potatoes does not pass to

the purchaser until the potatoes delivered are actually fed to livestock or processed into feed for livestock, and in this case, the potatoes purchased by Charles F. Williamson pursuant to his contract remained the property of and were owned by the Commodity Credit Corporation until actually fed to livestock or processed into livestock food. The Commodity Credit Corporation is a corporation chartered by the United States to purchase and dispose of surplus agricultural commodities.”

Now, you are to utterly disregard that instruction, and in place of it, I'll instruct you as follows: First, in order to more fully explain what this Commodity Credit Corporation is, I'll read to you from the Act of Congress establishing it, which is Section 714 of Title 15 of the United States Code: “For the purpose of stabilizing, supporting, and protecting farm income and prices, of assisting in the maintenance of [305] balanced and adequate supplies of agricultural commodities, products there, foods, feeds and fibers, and of facilitating the orderly distribution of agricultural commodities, there is created a body corporate to be known as Commodity Credit Corporation, which shall be an agency and instrumentality of the United States, within the Department of Agriculture, subject to the general direction and control of its Board of Directors.”

You are further instructed that if you find from the evidence in this case that the potatoes mentioned in the indictment were acquired by the United States Department of Agriculture pursuant to its program of stabilizing farm income and prices, and that such potatoes were sold and turned over to Charles F.

Williamson by and through the Commodity Credit Corporation, an agency of the United States, through the Department of Agriculture, to be fed to livestock, and if you further find that by the terms of the contract, title was reserved and did not pass to the purchaser until the potatoes were actually fed to livestock or processed into feed, then you will be justified in concluding that the potatoes were owned by the Commodity Credit Corporation until fed to livestock or processed into livestock feed.

Now, as I told you in connection with the other instructions you're not to place any special emphasis on this instruction, but consider it in connection with all the other instructions. [306] You will now retire. You're not to start deliberating again. Just don't deliberate until I bring you in again.

(Whereupon, the following proceedings were had without the presence of the jury.)

The Court: All right, you may take your exceptions now.

Mr. Robinson: I'm not trying to conceal from the Court the exceptions. I'll stand on this side of the table. We're used, in state court, to stand close to the reporter.

The Court: I didn't mean to infer there was anything surreptitious about taking your exceptions; that's the customary method of doing it. I only mentioned that because I didn't get the full purport of your exception at the time. I got thinking about it during the lunch hour. The only criticism was, I thought if you had that in mind you might have mentioned it before when we discussed it.

Mr. Robinson: I know in the Federal Court your Honor fixes the instructions, and I did not realize you invited full comments.

The Court: That's right.

Mr. Robinson: The defendant excepts to the giving of the instruction just read to the jury for the reason and upon the following grounds: That the reading of a portion of the act of Congress in question is not clear, and confusing to the jury with reference to the matters contained therein, and with particular reference to the nature of the property of the [307] Commodity Credit Corporation, and upon the ground that the statement—your Honor doesn't have that typed out, does he?

The Court: No; I have it in longhand here.

Mr. Robinson: Well, that's so much easier than mine to read.

The Court: You may have some trouble with it.

Mr. Robinson: ——and further excepts to the language in the instruction—I can include the whole instruction that is referred to, without reading it.

The Court: I suppose you call it the instruction given in lieu of the one as given by the plaintiff.

Mr. Robinson: If the reporter will read it into the record here, the whole instruction given in lieu of proposed instruction number 2 by the government, upon the ground that the principles of law stated therein are incorrect and erroneous, in that the jury would not as a matter of law be justified in concluding that the potatoes were owned by the Commodity Credit Corporation by reason of the facts preliminarily to be found as instructed by the Court in this

instruction, and that said instruction is erroneous as a matter of law.

The Court: All right. You may bring in the jury again.

(Whereupon, the following proceedings were had within the presence of the jury.)

The Court: I'm sorry to keep you running back and forth [308] so much, members of the jury, but that's the way we have to do things. You will now retire to consider your verdict. When you reach a verdict notify the bailiff and he'll see that you're brought into court again so we can receive your verdict. You will now retire to consider your verdict.

(Whereupon, at 2:27 o'clock p.m., the jury retired to deliberate upon its verdict.) [309]

### REPORTER'S CERTIFICATE

United States of America,  
Eastern District of Washington—ss.

I, Stanley D. Taylor, do hereby certify:

That I am the regularly appointed, qualified and acting official court reporter of the District Court of the United States in and for the Eastern District of Washington. That as such reporter I reported in shorthand and transcribed the foregoing proceedings before the Honorable Sam M. Driver, Judge of the District Court of the United States for the Eastern District of Washington, held on February 14, 15, and 16, 1949, at Yakima, Washington.

That the above and foregoing contains a full, true and correct transcript of the proceedings had therein,



excepting opening statements to the jury, argument on motion for judgment of acquittal, and final arguments to the jury.

Dated this 11th day of April, 1949.

/s/ STANLEY D. TAYLOR,  
Official Court Reporter.

[Endorsed]: Filed April 14, 1949. [310]

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PLAINTIFF'S EXHIBIT No. 1

To: C. F. Williamson:

Your eligibility fee has been paid in full, complete the enclosed application by showing your share in crop and answering question 9 (b) and (c) and return it to the office as soon as possible.

/s/ G. D. COPELAND,  
Chairman, Yakima County A. C. A.

Form 48 Potatoes—5 (Revised)

PRODUCER'S APPLICATION FOR CER-  
TIFICATE OF ELIGIBILITY

“The planting of potatoes in excess of the 1948 goal established for any farm, or, where separate goals are established for early and late potatoes, the planting of potatoes in excess of either such goals, shall, subsequent to the date of such excess planting, render any person having an interest in such farm as operator, owner, landlord, tenant, or partner ineligible to participate in 1948 potato price support operations. Such ineligibility shall extend also to any corporation or corporate stockholder whose op-



## Plaintiff's Exhibit No. 1—(Continued)

erations are subject to substantially the same management, ownership, or control as those of a corporation or corporate stockholder planting potatoes in excess of an acreage goal. The entire interest in potatoes planted within a non-commercial farm goal must be in the owner, or in the owner and the operator of such farm as a unit. Any person having an interest other than as owner or operator in potato production from one or more non-commercial farms shall be ineligible to participate in 1948 potato price support operations." (12 F.R. 8875, December 31, 1947.)

\* \* \* \*

I, C. F. Williamson, hereby apply for a certificate of eligibility to participate in the 1948 Irish potato price support program of the United States Department of Agriculture. In making this application I hereby represent and agree as follows:

1. (a) That I will not sell ungraded potatoes or field-run potatoes except to the Department of Agriculture or to eligible dealers (dealers who have entered into a Dealer Agreement with the Department) in the 1948 potato price support program.

(b) That I will not sell 1948 crop potatoes of or below U.S. No. 1 Size B grade or quality, or U.S. No. 2 grade or quality regardless of size except to the Department, to eligible dealers or with prior approval by the Department to processors, livestock feeders, or for export.

(c) That I will not sell cull potatoes except to eligible dealers or with prior approval of the Department, to processors, livestock feeders, or for export.

## Plaintiff's Exhibit No. 1—(Continued)

The restrictions contained in sub-paragraphs (a), (b), and (c) above do not apply to sales of seed potatoes officially certified and tagged by an official State seed certifying agency.

2. That I will not offer for delivery under the Department's price support program any potatoes which:

(a) Fail to meet at least the quality requirements of U.S. No. 2 grade,  $1\frac{7}{8}$  inches minimum diameter, or of U.S. No. 1 Size B grade, or

(b) Are damaged or affected by disease, insects, frost, or other injury to an extent rendering them unfit for normal consumption or unable to withstand normal shipment or storage, regardless of whether or not they meet requirements of U.S. grades; or

(c) Were harvested from land infested at harvest time with golden nematode or from land officially designated by a State or Federal agency as unfit for potato production because of disease or insect infestation; or

(d) Are limited or restricted in their distribution by quarantine regulations of a State or Federal agency.

3. That potatoes offered by me for price support which may be found objectionable because of odor, flavor, internal discoloration or other invisible damage, whether or not apparent at time of shipment and whether or not subject to determination by customary shipping point inspection procedure, shall not be eligible for price support and that upon claim by

## Plaintiff's Exhibit No. 1—(Continued)

the Department I shall reimburse the Department the sums received for such potatoes plus transportation and handling costs which the Department may have expended upon such potatoes.

4. That I will permit inspection by Department representatives at any reasonable time of my farm (or farms), potatoes, and storage wherever located, in connection with the price support program.

5. That I will offer for delivery under the Department's price support program and will sell to eligible dealers only potatoes in which I have an interest at harvest time as an owner-operator, tenant, or landlord.

6. That the Department may prescribe time periods within which I shall offer for price support only such quantities of potatoes as the Department determines to be a reasonable portion of the maximum quantity eligible for price support.

7. That the Department, when price support purchases are being made, may request delivery of any portion of my potatoes during specified period and in a specified manner, and if I fail to make such delivery the Department shall be relieved of any further price support obligation with respect to any of my potatoes.

8. (a) That I will make every effort to sell through regular commercial channels at not less than support prices announced by the Department all my potatoes grading better than U. S. No. 1, Size B or U. S. No. 2.

(b) That I will sell potatoes grading U. S. No. 1

Plaintiff's Exhibit No. 1—(Continued)  
or better to the Department under the price support program only when I am unable to obtain the equivalent of support price in commercial markets.

9. That the following statement as to farms and as to my interests in the potato crops listed below represents my entire interest in potatoes of the 1948 crop, and that the planted acreage on each farm is within the potato goal for such farm.

(a) In Yakima County: Farm Serial No. 7726; Interest in Crop, 100%; Acreage Goal, 132.00; Eligibility Fee, \$264.

(b) In other counties in this State (names of counties only): None.

(c) In other counties of other States (name of State and county): None.

10. That I hereby tender a fee amounting to \$264, to defray partially the expense of establishing my eligibility and the eligibility of my potatoes, such fee being the larger of \$3.00 or the rate established for this county, times acreage goal, times my interest in the potato crop. I understand that no refund of such fee will be made in whole or in part.

I understand and agree that any misrepresentation herein or any violation by me of this agreement will render me ineligible to participate in the price support program, and that I shall be liable for the payment to the Department of any damage suffered by it as a result of such misrepresentation or violation.

Date: May 15.

/s/ C. F. WILLIAMSON,  
Producer.

Plaintiff's Exhibit No. 1—(Continued)

**CERTIFICATE OF ELIGIBILITY**

This is to certify that the above named producer has agreed to the established conditions for participating in the 1948 Potato Price Support Program, has paid the initial service fee, has planted potato acreage within the goal(s) established for his farm(s), and is eligible to participate in the program.

Date: 7/23/48.

**YAKIMA COUNTY AGRICULTURAL  
CONSERVATION COMMITTEE,**

By /s/ D. A. GILLETTE.

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**PLAINTIFF'S EXHIBIT No. 2**

Form 48—Potatoes—3

United States Department of Agriculture  
Production and Marketing Administration

Program PC-3b-91

Contract No. Apm(Fx)44

**1948 POTATO DEALER AGREEMENT**

This Agreement, made and entered into this 20th day of June, 1948, by and between H. H. Simmons & Sons, of Box 381, Sunnyside, Washington (hereinafter referred to as "Dealer") and the Commodity Credit Corporation, an agency of the United States (hereinafter referred to as "CCC").

Witnesseth That:

Whereas, on November 28, 1942, the Secretary of Agriculture (hereinafter referred to as the "Secretary") made a public announcement requesting in-



## Plaintiff's Exhibit No. 2—(Continued)

creased production of potatoes, among other commodities; is therefore required, under the Steagall Amendment (Act of July 1, 1941, as amended), to institute operations which will support prices to producers of Irish potatoes at not less than 90 percent of parity through December 31, 1948; and in accordance with said amendment has instituted a program designed to carry out the mandate of Congress; and

Whereas, in carrying out this program, the Secretary desires to utilize the facilities of established and qualified commercial potato dealers; and

Whereas, Dealer is licensed under the Perishable Agricultural Commodities Act (7 U.S.C. 1940 ed. 499a-499r) by the United States Department of Agriculture, has met the requirements of the State PMA Committee with respect to qualifications and facilities, and is ready, willing, and able to assist the Secretary in carrying out the mandate of Congress under the Steagall Amendment;

Now, Therefore, in consideration of the promises herein contained, the parties hereto mutually agree as follows:

Article 1. Definitions. "Eligible Vendors" as used herein shall mean (1) growers who have been determined by County Agricultural Conservation Committee(s) to be eligible for participation in the 1948 Irish Potato Price Support Program; (2) dealers who have entered into a Dealer Agreement with CCC; and (3) others specically approved by CCC.

"Eligible Potatoes" as used herein shall mean all potatoes produced by eligible growers, except (a)



## Plaintiff's Exhibit No. 2—(Continued)

potatoes failing to meet at least the quality requirements of U.S. No. 2 grade  $1\frac{7}{8}$  inches minimum diameter or the requirements of U.S. No. 1 grade, size B; (b) potatoes damaged or affected by disease, insects, frost, or other injury to an extent rendering them unfit for normal consumption or unable to withstand normal shipment or storage, without regard to whether or not they meet grade requirements of U.S. Grades; (c) potatoes harvested from land infested at harvest time with golden nematode or from land officially designated by a State or Federal agency as unfit for potato production because of disease or insect infestation; (d) potatoes whose distribution is restricted or limited by State or Federal quarantine regulations; and (e) potatoes found objectionable because of odor, flavor, internal discoloration, or other invisible damage whether or not apparent at times of shipment and whether or not subject to determination by customary shipping point inspection procedure, provided however, that discovery of such condition after purchase, acceptance or delivery, and appropriate adjustment therefor, shall be construed as satisfactory administration of this exception and satisfactory performance of contractual requirements by the vendor.

“U. S. Grades” as used herein shall mean those defined in U. S. Standards for potatoes, effective June 1, 1942, and any subsequent amendments thereto or reissues thereof, and U. S. qualities are the comparable U. S. grades but without tolerance for defects or undersize.

“When directed by CCC”, “authorized by CCC,”

## Plaintiff's Exhibit No. 2—(Continued)

“prescribed by CCC,” and similar phrases as used herein shall mean directions, authorizations, or instructions, as the case may be, and modifications thereof, given in writing to Dealer by the Chairman or Acting Chairman of the State PMA Committee or by a CCC Contracting Officer authorized by such Chairman or Acting Chairman, and with respect to operations under Article 5, shall in addition include the provisions contained in that Article.

“Applicable support prices” as used herein shall mean support prices heretofore or hereafter announced by the United States Department of Agriculture with reference to the 1948 crop of Irish potatoes, adjusted for marketing services not performed in accordance with the schedule of marketing services attached hereto.

A “Contracting Dealer” as used herein shall mean a Dealer who has entered into a “1948 Potato Dealer Agreement,” Form 48—Potatoes—3, with CCC, or into a similar agreement with CCC.

## Article 2. Purchase and Sale of Potatoes by Dealer.

(I) Dealer shall purchase and sell in all of Dealer's operations only potatoes of eligible vendors. Dealer shall pay for all eligible potatoes not less than the equivalent of applicable support prices. If Dealer is a cooperative association of growers, the return to each grower shall be at not less than equivalent of applicable support prices for eligible potatoes.

(II) Dealer shall make every effort to sell in commercial operations all potatoes other than those specified in paragraph (III) of this Article. If, upon

## Plaintiff's Exhibit No. 2—(Continued)

request of Dealer, CCC determines, and this determination shall be final, that commercial outlets are such that after using every reasonable effort Dealer is unable to dispose of eligible potatoes in Dealer's own operations at prices at least equivalent to current support prices, CCC will issue appropriate directions or authorizations for disposition of potatoes as provided in Article 3.

(III) Dealer shall sell (except for seed potatoes officially certified and tagged by an official State seed certifying agency) (a) ungraded or field-run potatoes only to CCC or to other contracting dealers (b) potatoes of U.S. No. 1 grade or quality, size B, or U.S. No. 2 grade or quality, regardless of size, only to CCC or other contracting dealers, or as otherwise directed or authorized by CCC, and (c) cull potatoes (those below U.S. No. 1 grade or quality, size B, or U.S. No. 2 grade or quality,  $1\frac{7}{8}$  inches minimum diameter) only to other contracting dealers or, when authorized by CCC, to processors, livestock feeders, or for export. Authorizations or directions referred to in this paragraph will be issued as provided in Article 3.

Article 3. Directions or Authorizations for Disposition of Potatoes.

When CCC determines that Dealer is unable to dispose of eligible potatoes at prices at least equivalent to support prices as provided in Article 2 (II) hereof, or when Dealer requests authority to dispose of potatoes as provided in Article 2 (III) hereof, CCC shall; (I) Authorize Dealer to sell potatoes of

## Plaintiff's Exhibit No. 2—(Continued)

U.S. No. 1, size B, or U. S. No. 2,  $1\frac{7}{8}$  inches minimum diameter, grades in commercial food outlets at prices as authorized by CCC and without any liability by CCC; or (II) authorize Dealer to sell potatoes of U.S. No. 1 grade or quality, Size B, or U.S. No. 2 grade or quality, regardless of size, or potatoes of a lower grade or quality, to processors, livestock feeders, or for export and without any liability by CCC; or (III) direct or authorize Dealer to sell eligible potatoes in designated outlets, such as livestock feeders, processors, and similar diversion outlets at or above minimum prices or at fixed prices, as prescribed by CCC; or (IV) direct or authorize Dealer to deliver eligible potatoes to CCC, or to others for the account of CCC, in the manner prescribed by CCC; or (V) direct or authorize Dealer otherwise to dispose of eligible potatoes in a manner prescribed by CCC; or (VI) direct or authorize Dealer to sell eligible potatoes below support prices pursuant to Article 5 hereof. CCC may combine any or all of such directions or authorizations.

Article 4. Payment to Dealer for Potatoes Disposed of.

If Dealer is in compliance with all the provisions of this agreement and directions or authorizations issued pursuant thereto, CCC will pay to Dealer for potatoes sold, delivered or otherwise disposed of in accordance with clauses (III), (IV) and (V) of Article 3, the announced support prices, adjusted for marketing services not performed at the rates specified in the schedule of marketing services which is

## Plaintiff's Exhibit No. 2—(Continued)

attached hereto and made a part hereof. This payment shall be made on the basis of the support price applicable at the time of the sale, delivery or other disposal, as the case may be, on the basis of the quantity found to exist at that time, and on the basis of the grade determined by Federal-State inspectors at or within 48 hours prior to such time. Though Dealer may deliver to CCC or for the account of CCC potatoes which he acquired at higher than applicable support prices, the liability of CCC shall not be increased thereby. When Dealer sells potatoes at or above minimum prices or at fixed prices, as prescribed by CCC, in accordance with clause (III) of Article 3, he may retain 10 per cent of the net sales price (gross sales price less transportation charges, if any, included in such gross sales price), and the balance of the net sales price shall be deducted from any amounts owing to Dealer by CCC under this Article or Dealer shall pay the balance of the net sales price to CCC.

## Article 5. Sales Below Support Prices.

When directed or authorized by CCC as provided in Article 3 (VI), Dealer will offer for sale in commercial outlets, at minimum prices prescribed by CCC which will reflect less than the applicable support prices, any potatoes of designated quantities, qualities, grades, sizes, and varieties, acquired by Dealer at applicable support prices. When directed or authorized to offer for sale under this Article, Dealer may offer for sale stock acquired at higher than applicable support prices, but in such case the



## Plaintiff's Exhibit No. 2—(Continued)

liability of CCC relative to any such potatoes shall not be increased thereby. In the event such direction or authorization is issued to Dealer by the Chairman or Acting Chairman of the State Committee or a CCC Contracting Officer, there shall be attached thereto a signed or a "certified true and correct" copy of the corresponding direction or authorization given to such Chairman, Acting Chairman of the State Committee or a CCC Contracting Officer, by the Director or Acting Director, Fruit and Vegetable Branch, Production and Marketing Administration.

Article 6. Payment by CCC on Sales Below Support Prices.

When Dealer sells below the applicable support price in accordance with Article 5 and is in compliance with all other provisions of this agreement, CCC will pay him the difference between support price at time of sale adjusted for marketing services not performed and the sales price. If he sells at a lower price than the minimum prescribed by CCC, he shall not be entitled to any greater payment than if he had sold at the prescribed minimum price.

Article 7. When CCC will not Assume Liability.

In no event will CCC assume any liability for potatoes at or after the time they have been placed in transit by Dealer without prior authorization by CCC. In no event will CCC be liable for payment of any marketing services other than those authorized for the disposal outlet actually utilized. CCC will not assume any credit risks involved in sales by



## Plaintiff's Exhibit No. 2—(Continued)

Dealer other than in connection with the delivery by Dealer for the account of CCC in accordance with clause (IV) of Article 3; however, Dealer shall not be required to extend credit to any person other than CCC in complying with any direction or authorization of CCC. CCC reserves the right to limit the quantities of potatoes to be disposed of in designated outlets during specified periods of time and, in the event that potatoes are not disposed of by Dealer in accordance with direction or authorization of CCC pursuant to this agreement, to limit or cancel the obligations of CCC to Dealer under this agreement.

## Article 8. Terms of Sale for Designated Outlets.

When directed or authorized by CCC to sell potatoes in outlets other than domestic food and seed markets, Dealer shall require each purchaser to agree that the potatoes purchased will be used only by the purchaser and only for the purpose for which they were sold and will not be used in any form for human consumption. In view of the difficulty of ascertaining the exact damages suffered by CCC as a result of the potatoes being used for purposes other than those for which they have been sold, the agreement between Dealer and the purchaser shall provide that in case potatoes are used for a purpose other than the purpose for which they have been sold, the purchaser shall pay to CCC, as compensation and not as penalty, the amount of \$4.00 for each hundredweight or fraction thereof of potatoes used for food or seed or for export and \$1.00 for each hundredweight or fraction thereof of potatoes used

## Plaintiff's Exhibit No. 2—(Continued)

for purposes other than for food, seed, or for export and other than authorized by the purchaser's agreement.

## Article 9. Identifying Potatoes.

When directed by CCC, Dealer shall identify potatoes sold, delivered, or disposed of in other than domestic food and seed markets, and take such action as prescribed by CCC, for instance by marking or dyeing potatoes, as will confine such potatoes to the uses for which they were disposed.

## Article 10. Liquidated Damages.

In the event Dealer purchases or sells potatoes of an ineligible vendor; or pays for eligible potatoes less than the equivalent of applicable support prices; or fails to comply with any of the provisions of Article 2 (III); the parties hereto agree, in view of the difficulty of ascertaining the exact damages suffered by CCC as a result of such actions, that such damages shall be \$4.00 per hundredweight or fraction thereof of potatoes so purchased or sold and that Dealer will pay said amount to CCC, as compensation and not as a penalty. Inasmuch as payment of \$4.00 is not intended to take the place of any obligation of Dealer to refund to CCC any monies which he collected without being entitled thereto, this provision for liquidated damages or payment of such damages shall not preclude or invalidate claims of CCC for such refunds. Neither shall this provision exclude any other relief, at law or in equity, to which CCC may be entitled apart from its claim for damages.

## Plaintiff's Exhibit No. 2—(Continued)

## Article 11. Agency.

In carrying out the directions or authorizations of CCC to purchase, sell, transport, or otherwise dispose of potatoes, Dealer shall not act as agent of CCC, except as specifically provided for in this agreement.

## Article 12. Cancellation.

Either party hereto may, without liability to the other, cancel this agreement at any time by giving 30 days notice in writing. The cancellation shall become effective at the close of business on the 30th day following the date of sending or delivering the notice. However, both parties shall continue to perform this agreement on the basis of directions or authorizations issued by CCC prior to or during said 30 day period, though such performance may require action after the expiration of such period.

For breach of any provision of this agreement by Dealer as determined by CCC, whose determination shall be final, CCC may cancel this agreement forthwith by written notice, such cancellation to become effective upon the receipt of the notice by Dealer.

## Article 13. Claim for Payment.

Payment will be made by CCC to dealer as soon as practicable after Dealer has submitted a claim properly executed as prescribed by CCC on "Public Voucher—Purchase Programs," Form CCC-125, and supported by documentary evidence of compliance with the terms of this agreement as follows:

(A) For every lot of potatoes on which a claim is made for payment, Dealer shall submit two copies

Plaintiff's Exhibit No. 2—(Continued)  
of a Federal State Inspection Certificate covering the particular lot of potatoes. Such certificate must show the grades or qualities of such potatoes.

(B) For sales in outlets other than domestic food and seed markets the Dealer shall submit in addition to Inspection Certificates, (i) two copies of each invoice on which the purchaser has executed a receipt for the quantity of potatoes invoiced and a statement that the purchaser has made or will make payment at the price(s) stated on the invoices, and (ii) two copies of an agreement by the purchaser, as required in Article 8 hereof. The documentation required in (i), and (ii), of this paragraph may be combined in one document constituting an "Invoice, Receipt, and Agreement." Such documents shall identify the potatoes sold by reference to the lot number(s) and Inspection Certificate number(s).

(C) For potatoes delivered to CCC or to others for the account of CCC, the Dealer shall obtain, in addition to the Inspection Certificate, original and two copies of a Consignee's Receipt or three copies of the Commercial Bill of Lading or one yellow copy of Government Bill of Lading for use as follows: (i) the original and one copy of Consignee's Receipt or two copies of Commercial Bill of Lading will be submitted to the authorized Representative of CCC immediately after delivery or shipment; (ii) one copy of Consignee's Receipt or one copy of the Commercial Bill of Lading or the yellow copy of the Government Bill of Lading will be attached to Dealer's claim for payment.

(D) For potatoes sold below support prices as

## Plaintiff's Exhibit No. 2—(Continued)

provided in Article 5 hereof, the Dealer shall submit, in addition to the Inspection Certificate, two copies of each invoice to the purchaser, bearing purchaser's acknowledgment of delivery. In lieu of such receipted invoices Dealer may submit two copies of each invoice to the purchaser and one copy of satisfactory evidence of delivery. Such evidence of delivery may include, but is not limited to a signed copy (signature may be by carbon impression) of a commercial bill of lading or trucker's receipt showing name of purchaser, a consignee's receipt, or a receipt signed by a person who represents the consignee such as "manager" or "receiving clerk."

(E) For potatoes disposed of in a manner prescribed by CCC other than is covered by paragraphs (B), (C), and (D) of this Article, the Dealer shall submit, in addition to the Inspection Certificate, the original and one copy of a certificate executed by a designated representative of CCC showing the quantity of potatoes and certifying that such potatoes were disposed of in the manner directed.

(F) To facilitate payment, a separate claim should be prepared by the Dealer to cover transactions referred to in each of the paragraphs (B), (C), (D), and (E) of this Article.

Example: A properly executed voucher, Form CCC-125, and supporting documents required by paragraph (B) of this Article, will constitute a claim in connection with sales made in outlets other than food and seed markets. The amount due CCC from proceeds of such sales should be computed by Dealer and shown as a deduction on the voucher or on a



## Plaintiff's Exhibit No. 2—(Continued)

summarized statement attached to the voucher. When summarized statements are furnished by Dealer, an original and two copies must be attached to the voucher.

## Article 14. Reports and Examination of Books and Records.

Dealer agrees to maintain books and records adequate for verification of operations pursuant to this agreement and to furnish such reports as are requested by CCC, subject to the approval of the Bureau of the Budget. Such books and records shall be available to CCC for inspection and verification during regular business hours at the office of the Dealer. Dealer further agrees to allow CCC during regular business hours, or at any other reasonable time, to inspect the Dealer's premises and operations to determine compliance with this agreement. The books and records maintained by Dealer pursuant to this Article shall show (i) name and address of each vendor from whom he purchased potatoes or for whom he sold potatoes, (ii) the quantities by grades, sizes, and condition for market (such as, bulk loaded, sack loaded, etc.), and the price paid by Dealer for each grade and size. When Dealer purchases potatoes of grades or qualities other than those for which prices are established in Price Support Announcements issued by the United States Department of Agriculture, such books and records shall show the quantities, grades and sizes, and the prices paid or returned to grower for each grade and size, as computed at the time of purchase. In addition to the



## Plaintiff's Exhibit No. 2—(Continued)

above records, Dealer may obtain and retain in his files a statement signed by the vendor and Dealer setting for the quantities by mutually agreed grades, sizes, and prices of the potatoes purchased. Such statement, with respects to potatoes, will be acceptable to CCC as evidence relating to payment of the equivalent of applicable support prices by the Dealer.

## Article 15. Waiver.

CCC may, in its absolute discretion, waive compliance on the part of the Dealer with any requirements of this agreement with respect to any one or more transactions. To be effective, however, such waiver must be in writing, signed by a Contracting Officer of CCC, and approved by the Director, or Acting Director, Fruit and Vegetable Branch, Production and Marketing Administration.

## Article 16. Officials Not to Benefit.

No member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this agreement or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit and shall not extend to any benefits that may accrue to a member of or Delegate to Congress or Resident Commissioner in his capacity as a farmer (41 U.S.C. 22; 18 U.S.C. 204-6).

Note: The record keeping requirements of this agreement have been approved by the Bureau of the

## Plaintiff's Exhibit No. 2—(Continued)

Budget in accordance with the Federal Reports Act of 1942.

/s/ H. H. SIMMONS & SONS,  
Dealer.

By /s/ H. H. SIMMONS,  
Manager and Owner.

COMMODITY CREDIT CORPORATION,

/s/ CLAUS W. PETERS,  
Contracting Officer.

United States Department of Agriculture  
Production and Marketing Administration

APPROVED 1948 POTATO MARKETING  
SERVICE CHARGES

Service	Sacked F.O.B. Car	Bulk F.O.B. Car
1. Hauling .....	\$.05	\$.05
2. Washing or Cleaning	xxx	.xxx
3. Grading .....	.125	.125
4. Sacking .....	.025	xxx
5. Sack Cost (New)....	.25	xxx
6. Loading .....	.025	.075
7. Inspection .....	.0175	.0175
8. Selling .....	.05	.05
	<hr/>	<hr/>
Total.....	\$5425	xxx

PLAINTIFF'S EXHIBIT No. 3

Form 48—Potatoes—3

United States Department of Agriculture  
Production and Marketing Administration

PC-3b-91

Contract No. A8pm(Fx)74

1948 POTATO DEALER AGREEMENT

This Agreement, made and entered into this 28th day of July, 1948, by and between Pasco Growers of Kennewick, Washington (hereinafter referred to as "Dealer") and the Commodity Credit Corporation, an agency of the United States (hereinafter referred to as "CCC").

Witnesseth That:

[Printer's Note: Articles 1 to 16 are similar to Articles 1 to 16, Plaintiff's Exhibit No. 2, and for economy are not reproduced here.]

\* \* \* \*

/s/ PASCO GROWERS ASSN.,

By /s/ D. B. BAKER,  
Manager.

COMMODITY CREDIT CORPORATION,

/s/ CLAUD W. PETERS,  
Contracting Officer.

[Printer's Note: Approved 1948 Potato Marketing Service Charges are similar to Plaintiff's Exhibit No. 2 Services Charges.]

## PLAINTIFF'S EXHIBIT No. 4

United States Department of Agriculture  
Production and Marketing Administration

Announcement No. FV-91-2

Contract No. A8pm(Fs)781      Program PC-3b-91-3

ANNOUNCEMENT OF SALE OF FRESH  
IRISH POTATOES FOR LIVESTOCK  
FEED

The United States Department of Agriculture and the Commodity Credit Corporation, an agency of the United States within the United States Department of Agriculture (both being hereinafter referred to as USDA), may have fresh Irish potatoes available from time to time for sale as livestock feed. These potatoes will have been acquired under the Irish Potato Price Support Program.

Potatoes for livestock feed will be sold subject to the terms and conditions set forth in Form FV-111 and at the following prices:

Delivered sacked, Government Point of Purchase or Storage \$.10 cwt. in the State of Washington.

How to Obtain Potatoes for Livestock Feed

Prospective purchaser will fully execute the order as indicated below and after execution will forward this entire form to John Chinn, Purchase Representative, located at 201 Old Court House, Yakima, together with certified or cashier's check or postal money order payable to the Treasurer of the United States for the full amount of the purchase price for the potatoes he desires to purchase at the applicable

## Plaintiff's Exhibit No. 4—(Continued)

price stated above. No order will be filled for less than minimum carloads unless purchaser agrees to accept delivery at the point of purchase by USDA and arranges for his own hauling.

A contract will come into existence with reference to a quantity of potatoes when such quantity is loaded on cars or trucks at shipping point.

/s/ CLAUD W. PETERS,

Representative of the Secretary of Agriculture and  
Contracting Officer, Commodity Credit Corpora-  
tion.

## ORDER

(To be filled in and signed by prospective purchaser)

I/We the undersigned hereby offer to purchase 11,000 cwt. of fresh Irish potatoes, Government Point of Purchase or Storage, \$.10 cwt. in the State of Washington—sacked (strike out phrase not applicable) and warrant that the potatoes will be used only for feeding livestock.

Name of purchaser and Consignee: C. F. Williamson. Date: Aug. 19, 1948. Address: Sunnyside, Washington.

Destination: Sunnyside.

Delivering Carrier: Truck.

Delivery Schedule (date and quantity): 50 ton a day.

I/We agree to take delivery at USDA point of purchase and I/We will do our own hauling.

I/We have read the terms and conditions of this sale as set forth herein and in Form 111, "Terms and

Plaintiff's Exhibit No. 4—(Continued)  
Conditions for Sale of Fresh Irish Potatoes for Live-  
stock Feed'' and agree fully to abide by such terms  
and conditions.

/s/ C. F. WILLIAMSON,  
Signature of Purchaser.

### RECEIPT

Receipt is hereby acknowledge of the above order  
and payment in the amount of \$1,100.00 covered by  
No. 9 4729 and No. 9 4874 Aug. 19 and Sept. 22, 1948.

Date: September 22, 1948.

/s/ JOHN CHINN,  
Purchase Representative.

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### PLAINTIFF'S EXHIBIT No. 5

Form FV-111

United States Department of Agriculture  
Production and Marketing Administration  
Fruit and Vegetable Branch, Washington, D. C.

### TERMS AND CONDITIONS FOR SALE OF FRESH IRISH POTATOES FOR LIVESTOCK FEED

Use: Purchaser agrees to use the potatoes deliv-  
ered pursuant to his order for the sole purpose of  
feeding such potatoes to livestock. Title to the pota-  
toes shall not pass to the purchaser until the potatoes  
delivered are actually fed to livestock or processed  
into feed for livestock.

Failure or Delay in Deliveries: The United States



## Plaintiff's Exhibit No. 5—(Continued)

Department of Agriculture and the Commodity Credit Corporation are hereinafter referred to as USDA. USDA does not guarantee the delivery to purchaser under the order of any specified quantity of potatoes at any specified rate or time, and there shall be no liability on the part of USDA for any failure or delay in filling the order, except that USDA shall refund to the purchaser the price paid with respect to any quantity of potatoes not delivered within a reasonable time after the scheduled delivery date.

**Quality and Mode of Delivery:** The potatoes to be delivered pursuant to this order are expected to be loaded in bulk. However, USDA reserves the right at its option, to make delivery in bags. At the discretion of USDA the potatoes may be stained by the use of a vegetable coloring which will not affect their use or fitness for stock feed. Quantities shipping by common carrier will be loaded in accordance with applicable regulations governing the use of cars for shipment of potatoes for the purpose for which they were sold. Cars will be loaded with not less than the applicable minimum carload weight. USDA gives no warranty as to grade, quality or condition of any potatoes to be delivered except that no lot shall have more than 2 per cent soft rot when inspected at government point of purchase. The purchaser shall assume all risk as to grade, quality or condition after such inspection. If sale is made f.o.b. government shipping point, freight charges will be paid by the purchaser. If sale is made f.o.b. destination, freight charges will be paid by USDA.

## Plaintiff's Exhibit No. 5—(Continued)

**Over and Under Delivery:** Purchaser hereby agrees to pay USDA for any overage in delivery not to exceed 10 per cent of a particular carload or truckload and such payment shall be made within 15 days of receipt of invoices. USDA agrees to refund to the purchaser any amount due because of under-delivery. Determination of weights as established by USDA shall be final.

**Determination of Weights:** The weight of the potatoes delivered shall be established at the option of USDA on the basis of (a) USDA's purchase weight certificate or (b) cubic measurement as certified by the County Agricultural Conservation Committee, or (c) truck scale weights or (d) number of containers delivered multiplied by net weight per container as determined by USDA.

**Records:** Representative of USDA shall at any reasonable time have access to purchaser's premises, and other facilities in order to determine that the potatoes were, or are being used in accordance with the terms and conditions of the contract.

**Compliance:** It is understood that USDA would not deliver potatoes pursuant to this order if the purchaser did not warrant that they would be used only for feeding livestock. Since failure on the part of the purchaser to use the potatoes solely for feeding livestock will cause serious and substantial damage to USDA and since it will be difficult to establish the exact amount of such damage, purchaser agrees if the potatoes are utilized in any form for human food or for any other purpose except for feeding

## Plaintiff's Exhibit No. 5—(Continued)

livestock, to pay USDA in addition to any other charges that may be due USDA with respect to the potatoes, as compensation and not as penalty, liquidated damages at the rate of \$4.00 per cwt. or fraction thereof, with respect to any quantity of the potatoes used for human food and at the rate of \$1.00 per cwt. with respect to any quantity used for purposes other than human food and livestock feeding. If potatoes are used for purposes other than feeding livestock, it shall be presumed that they have been used for human food, and the burden of proving that they have been used for some other purpose shall be on the purchaser. This provision shall not exclude any other form of relief to USDA, at law or in equity, including relief by injunction, in case the purchaser breaches this contract.

**Officials Not To Benefit:** No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the contract if made with a corporation for its general benefit and shall not extend to any benefits that may accrue from the contract to a Member of or Delegate to Congress or a Resident Commissioner in his capacity as a farmer. (41 U.S.C. §22, 18 U.S.C. §204-8).

## PLAINTIFF'S EXHIBIT No. 6

Form FV-47 (Washington)

191370-E

United States Department of Agriculture  
Production and Marketing Administration  
State of Washington Department of Agriculture

## INSPECTION CERTIFICATE

This certificate is issued in compliance with the regulations governing the inspection of various products pursuant to the Act making appropriations for the United States Department of Agriculture and Statutes of the State of Washington, and is admissible as prima facie evidence in all courts of the United States and of Washington. This certificate does not excuse failure to comply with any of the regulatory laws enforced by the United States Department of Agriculture or the Federal Food and Drug Administration.

Inspection point: Sunnyside, Wash.

Inspection begun: 8:45 a.m., August 23, 1948.

Completed: 6 p.m., Aug. 23, 1948.

Applicant: H. H. Simmons & Sons. Address: Sunnyside, Wash.

I, the undersigned, on the date above specified made personal inspection of samples of the lot of products herein described, and do hereby certify that the quality and/or condition, at the said time and on said date, pertaining to such products, as shown by said samples, were as stated below:

Where Inspected: In warehouse of applicant as being loaded on trucks.

## Plaintiff's Exhibit No. 6—(Continued)

Products: White Rose Potatoes, 445 used 100 lb. sacks, Paramount Brand, marked U. S. No. 1.

Size: Generally  $1\frac{7}{8}$  inches in diameter to 24 ounces. Undersize within tolerance.

Quality and condition: Potatoes are firm, clean, slightly to badly skinned and fairly well shaped. No soft rot. Grade defects average within tolerances.

Grade: U. S. No. 1, Class ZZZ.

## Certification of Count

I, the undersigned inspector, do hereby certify that I personally counted the sacks of potatoes after loading on trucks bearing Washington State license TKE 10170 and TLE 1190 and that the count of 445 100-lb. sacks reported in the Products statement above is correct. Transportation of the lot was accomplished in two trips with loads of 315 and 130 sacks per trip; applicant states potatoes are to be delivered to C. F. Williamson, Sunnyside, Wash.

Fee: \$9.10.

/s/ JOHN R. CATLIN,  
Inspector.

## PLAINTIFF'S EXHIBIT No. 7

Form CCC-125

Serial No. A800029

U. S. Department of Agriculture  
Production and Marketing Administration  
Commodity Credit Corporation

PUBLIC VOUCHER—PURCHASE  
PROGRAMS

(Agricultural commodities and related services)

Bu. Voucher No.: 48-P-2597.

Paid by: C-127113 10-4-48.

Voucher prepared at Yakima, Washington.

Date: September 11, 1948.

United States, Dr., To H. H. Simmons & Sons,  
Payee. Payee's Account No. 1343 JC.

Lienholder as joint payee: None.

Payee's address: Box 381, Sunnyside, Wash.

Address to which check shall be mailed: Same.

(Delivery or Service): Date: 8-24-48.

Program No. and Title: PC-3b-91-3.

(Contract Date): June 20, 1948.

(Contract No.): A8pm(Fx)44.

Livestock Feed: A8pm (FS-781).

(Purchase Order No.): PC-3b-91-1.

Description of Transaction: Fresh Irish Potatoes.  
U. S. No. 1. Quantity (No. of units): 445. Unit: 100  
lb. sacks. Amount Claimed per Unit: 2.20. Amount  
Claimed: \$979.00. Total, \$979.00.



## Plaintiff's Exhibit No. 7—(Continued)

Marketing charges not allowed. 10c reduction for used bags.

Account verified correct for \$979.00 (Signature or initials): TSP.

Shipping point: Sunnyside, Washington.

Destination: Sunnyside, Washington. Weight of Shipment: 44945. Trk. Lic. No. or Car No. TKE 10170. TLE 1190. Commercial Use: None.

## Certificate of Vendor

I certify that the above bill is correct and just; that payment therefor has not been received; that the commodity or service listed herein has been delivered to or performed for the Commodity Credit Corporation; that all statutory requirements as to American production and labor standards, and all conditions of purchase applicable to the transactions have been complied with; that State or local sales taxes are not included in the amounts billed; and that I have the sole ownership or interest in the listed commodity or services, that they are free from any or all liens and encumbrances except for equities owned by the lienholder(s) named above.

Date: 9/15/48.

/s/ H. H. SIMMONS & SONS,  
Contracting Dealer.

By /s/ H. H. SIMMONS,  
Manager.

## Certificate of Receipt

I certify that the commodity described, after having passed proper inspection, was received and accepted in good condition in the quantities stated, for and on behalf of the Commodity Credit Corporation, or if services, that such services were performed as stated.

Date: 9-15-48.

/s/ JOHN CHINN,  
Receiving Agent.

## Certificate of Certifying Officer

Pursuant to authority vested in me, I certify that the above bill is correct and just and is approved for payment in the amount of \$979.00.

Date: Sept. 28, 1948.

/s/ THOMAS S. PARKE,  
Admin. Asst.

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PLAINTIFF'S EXHIBIT No. 8

Form FV-47 (Washington)

No. 171376-E

United States Department of Agriculture  
Production and Marketing Administration  
State of Washington Department of Agriculture

## INSPECTION CERTIFICATE

This certificate is issued in compliance with the regulations governing the inspection of various products pursuant to the Act making appropriations for the United States Department of Agriculture

## Plaintiff's Exhibit No. 8—(Continued)

and Statutes of the State of Washington, and is admissible as prima facie evidence in all courts of the United States and of Washington. This certificate does not excuse failure to comply with any of the regulatory laws enforced by the United States Department of Agriculture or the Federal Food and Drug Administration.

Inspection point: Sunnyside, Wash.

Inspection begun: 8 a.m., Aug. 24, 1948.

Completed: 12:30 p.m., Aug. 24, 1948.

Applicant: Pasco Growers Assoc., Sunnyside, Wash.

I, the undersigned, on the date above specified made personal inspection of samples of the lot of products herein described, and do hereby certify that the quality and/or condition, at the said time and on said date, pertaining to such products, as shown by said samples, were as stated below:

Where Inspected: At warehouse of applicant as being loaded on trucks.

Products: White Rose Potatoes, 200 used 100 lb. sacks, Blue Mountain Brand, marked U. S. No. 1. 59 used 100 lb. sacks, no brand, no grade marks.

Size: Generally  $1\frac{7}{8}$  inches in diameter to 24 ounces. Undersize within tolerance.

Quality and condition: Potatoes are firm, clean, slightly to badly skinned, and in U. S. No. 1 lot fairly well shaped. Each lot, less than  $\frac{1}{2}$  of 1% soft rot. Each lot, grade defects average within tolerances.

Grade: Blue Mountain Brand, U. S. No. 1. No brand, U. S. No. 2 ( $1\frac{7}{8}$ -inch minimum) Class X.

## Plaintiff's Exhibit No. 8—(Continued)

## Certification of Count

I, the undersigned inspector, do hereby certify that I personally counted the sacks of potatoes after loading on trucks bearing Washington State license Nos. TKE 7015 and 10173, and that the count of 259 100-lb. sacks reported in the Products statement above is correct. Transportation of the lot was accomplished in two trips with loads of 208 and 51 sacks carried per trip. Truck drivers stated that loads were to be delivered to C. F. Williamson, Sunnyside, Wash.

Fee: \$7.00.

/s/ JOHN B. KERBY,  
Inspector.

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## PLAINTIFF'S EXHIBIT No. 9

Form CCC-125

Serial No. B-124456

U. S. Department of Agriculture  
Production and Marketing Administration  
Commodity Credit Corporation

PUBLIC VOUCHER—PURCHASE  
PROGRAMS

(Agricultural commodities and related services)  
Bu. Voucher No. 6049.

Paid by: C-131591 10-28-48.

Voucher prepared at Yakima, Washington.

Date: Oct. 7, 1948.

United States, Dr., To: Pasco Growers' Assn.  
(Payee's Account No.): 1355.

Plaintiff's Exhibit No. 9—(Continued)

Lienholder as joint payee: None.

Payee's address: Sunnyside, Washington. Address to which check shall be mailed: Same.

(Delivery or Service): Date: 8-24-48.

Program No. and Title: PC-3b-91-3.

(Contract Date): July 29, 1948.

(Contract No.): A8pm(Fx) 74/2/8.

(Delivery Order No.): A8pm(FS-781).

(Shipping Order No.): Livestock Feed.

(Purchase Order No.): PC-3b-91-1.

Description of Transaction (state quality and grade of commodity): Fresh Irish Potatoes, U.S. No. 1; Quantity (No. of units), 200; Unit, 100 lb. sacks; Amount Claimed per unit, 2.20; Amount Claimed, 440.00. U. S. No. 2: Quantity (No. of units), 59; Unit, 100 lb. sacks; Amount Claimed per unit, 1.05; Amount Claimed, 61.95. Total: 501.95.

Marketing charges not allowed. 10c reduction for used bags.

Account verified; correct for: 501.95. (Signature or initials): KL.

Shipping point: Sunnyside, Washington.

Destination: Sunnyside, Washington. Weight of Shipment, 26159. Trk. Lic. No. or Car No.: TKE 7015, 10173.

Certificate of Vendor

I certify that the above bill is correct and just; that payment therefor has not been received; that the commodity or service listed herein has been delivered to or performed for the Commodity Credit Corporation; that all statutory requirements as to American production and labor standards, and all

Plaintiff's Exhibit No. 9—(Continued)  
conditions of purchase applicable to the transactions have been complied with; that State or local sales taxes are not included in the amounts billed; and that I have the sole ownership or interest in the listed commodity or services, that they are free from any or all liens and encumbrances except for equities owned by the lienholder(s) named above.

Date: 10-13-48.

/s/ PASCO GROWERS ASSN.

Office Manager,

By /s/ D. D. ROCHAT,

Contracting Dealer.

#### Certificate of Receipt

I certify that the commodity described, after having passed proper inspection, was received and accepted in good condition in the quantities stated, for and on behalf of the Commodity Credit Corporation, or if services, that such services were performed as stated.

Date: 10-13-48.

/s/ JOHN CHINN,

Receiving Agent.

#### Certificate of Certifying Officer

Pursuant to authority vested in me, I certify that the above bill is correct and just and is approved for payment in the amount of \$501.95.

Date: 10/26/48.

/s/ THOMAS S. PARKE,

Admin. Asst.



PLAINTIFF'S EXHIBIT No. 10

Form PMA-375

U. S. Department of Agriculture  
Production and Marketing Administration  
Shipping and Storage Branch

CONSIGNEE'S RECEIPT

Budget Bureau No. 40-R1353.1. Approval Expires  
Dec. 31, 1948. Date 8-23-48. Sales Contract No. or  
Requisition No. A8pm(FS-781).

Consignee and Address: C. F. Williamson, Sunny-  
side, Washington.

Place of Acceptance: (Consignor and address):  
H. H. Simmons & Sons, Sunnyside, Washington.

Item No. 1; Commodity & Code, Fresh Irish Pota-  
toes; No. and Kind of Packages, 445 No. 1 (U.S.)  
100 lb. sacks; Net Weight, 44500; Gross Weight,  
44945; Ex-Car No., TKE 10170 TLE 1190; Ex-Order  
No., Purchase No. 1343; Outbound Order No., PC-  
3b-91-3.

This is to certify that the property herein de-  
scribed has been received as shown above. It was re-  
ceived in good condition except as noted on the re-  
verse side, identified by item(s) above.

/s/ C. F. WILLIAMSON,  
Signature of Consignee.

## PLAINTIFF'S EXHIBIT No. 11

Form PMA-375

U. S. Department of Agriculture  
Production and Marketing Administration  
Shipping and Storage Branch

## CONSIGNEE'S RECEIPT

Budget Bureau No. 40-R1353.1. Approval Expires  
December 31, 1948. Date: 8-24-48. Sales Contract  
No. or Requisition No. A8pm(FS-781).

Consignee and Address: C. F. Williamson, Sunny-  
side, Wn.

Place of Acceptance (Consignor and Address):  
Pasco Growers Ass'n, Sunnyside, Wn.

Item No. 1; Commodity and Code, Fresh Irish  
Potatoes; No. and Kind of Packages, 200 100-lb.  
sacks No. 1 (net weight 20,000, gross weight 20,200),  
No. and kind of packages, 59 100-lb. sacks U.S. No. 2  
(net weight 5900, gross weight 5959); Ex-Car No.,  
TKE 7015 and 10173; Ex-Order No., Purchase No.  
1355; Outbound Order No., PC-3b-91-3.

This is to certify that the property herein de-  
scribed has been received as shown above. It was re-  
ceived in good condition except as noted on the re-  
verse side, identified by item(s) above.

/s/ C. F. WILLIAMSON,  
Signature of Consignee.

PLAINTIFF'S EXHIBIT No. 12

United States Department of Agriculture  
Production and Marketing Administration  
Spokane, Washington

Announcement No. FV-91-2.

Contract No.: A8pm(Fs)1641.

Program: PC-3b-91-3.

ANNOUNCEMENT OF SALE OF FRESH  
IRISH POTATOES FOR LIVE-  
STOCK FEED

The United States Department of Agriculture and the Commodity Credit Corporation, an agency of the United States within the United States Department of Agriculture (both being hereinafter referred to as USDA), may have fresh Irish potatoes available from time to time for sale as livestock feed. These potatoes will have been acquired under the Irish Potato Price Support Program.

Potatoes for livestock feed will be sold subject to the terms and conditions set forth in Form FV-111 and at the following prices:

Delivered sacked, Government Point of Purchase or Storage \$.10 cwt. in the State of Washington.

How to Obtain Potatoes for Livestock Feed

Prospective purchaser will fully execute the order as indicated below and after execution will forward this entire form to John Chinn, Purchase Representative, located at 201 Old Court House, Yakima, Wash., together with certified or cashier's check or postal money order payable to the Treasurer of the United States for the full amount of the purchase

## Plaintiff's Exhibit No. 12—(Continued)

price for the potatoes he desires to purchase at the applicable price stated above. No order will be filled for less than minimum carloads unless purchaser agrees to accept delivery at the point of purchase by USDA and arranges for his own hauling.

A contract will come into existence with reference to a quantity of potatoes when such quantity is loaded on cars or trucks at shipping point.

/s/ CLAUD W. PETERS ,

Representative of the Secretary of Agriculture and  
Contracting Officer, Commodity Credit Corpora-  
tion.

## ORDER

(To be filled in and signed by prospective purchaser)

I/We the undersigned hereby offer to purchase 4100 cwt. of fresh Irish potatoes, Government Point of Purchase or Storage, \$.10 cwt. in the State of Washington, sacked, and warrant that the potatoes will be used only for feeding livestock.

Name of purchaser and consignee: Melvin E. Waller. Date: Aug. 25, 1948. Address: Sunnyside, Washington. Destination: Sunnyside. Delivering Carrier: Truck. Delivery Schedule (date and quantity): 50 ton a day.

I/We agree to take delivery at USDA point of purchase and I/We will do our own hauling.

I/We have read the terms and conditions of this sale as set forth herein and in Form 111, "Terms and Conditions for Sale of Fresh Irish Potatoes for Livestock Feed" and agree fully to abide by such terms and conditions.

/s/ MELVIN E. WALLER,  
Signature of Purchaser.

Plaintiff's Exhibit No. 12—(Continued)

RECEIPT

Receipt is hereby acknowledged of the above order and payment in the amount of \$410.00 covered by (number and date of certified check or postal money order) 918748, 918749, 918750 and No. 9 1469, Aug. 25 and Sept. 23, 1948.

Date: September 24, 1948.

/s/ JOHN CHINN,  
Purchase Representative.

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PLAINTIFF'S EXHIBIT No. 13

[Printer's Note: Plaintiff's Exhibit No. 13 is identical to Plaintiff's No. 5, set out in full at page 310 of this printed Record.]

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DEFENDANT'S EXHIBIT No. 14

August 19, 1948

This certifies that C. F. Williamson has made a Contract with our office for 500 ton of potatoes for livestock feed.

/s/ JOHN CHINN,  
Purchase Representative.

## PLAINTIFF'S EXHIBIT No. 15

Caruso Produce, Inc.  
Wholesale Fruit and Produce Distributors

S. E. Belmont at 10th Ave.

Portland, Oregon

No. 2372

Date: 8/25/48

## PURCHASE ORDER

We have this day purchased from Hathaway Farms by Homer Waller the following:

323 sacks No. 1 Spuds; price, \$2.10; amount, \$678.30.

[Stamped]: Aug. 25, 1948, Caruso Produce, Inc.,  
by 3197.

Received payment:

/s/ H. WALLER.

Authorized by:

JOE CARUSO.



PLAINTIFF'S EXHIBIT No. 17

[Cancelled Check]

Caruso Produce, Inc. No. 3197  
935 S. E. Belmont St., East 1119  
Portland 14, Oregon. 8/25/48

[Stamped]: Certified \$678.30

[Stamped]: Caruso Produce, Inc., \$678 and 30cts.  
Hathaway Farms

By /s/ JOE N. CARUSO,  
By /s/ SAM J. CARUSO.

Citizens Branch The United States National Bank,  
Portland, Oregon.

[Signatures on reverse side]: Hathaway Farms  
by K. Hathaway.

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DEFENDANT'S EXHIBIT No. 18

August 25, 1948

This certifies that Melvin Waller has signed a Contract with our office for 149 tons of potatoes for livestock feed.

/s/ JOHN CHINN,  
Purchase Representative.

## PLAINTIFF'S EXHIBIT No. 19

Federal No. 25

Date	From	To	Return to	Ore. Miles	Total Miles	Gas Used	Driver
July 2	Sunnyside	Spokane	Sunnyside		410	128.1	J.D.
3	Sunnyside	Mosier	Sunnyside	84	244	82.2	J.D.
						5.7	
						95.6	
Aug. 6	Sunnyside	Seattle	Sunnyside		410	92.8	J.D.
9	Sunnyside	Grandview			7	80.2	"
9	Grandview	Portland	Sunnyside	32	407	75.7	"
13	Sunnyside	Grandview			7	28.1	"
13	Grandview	Tacoma			247	82.0	"
13	Tacoma	Prosser	Sunnyside		268	20.1	"
16	Sunnyside	Grandview			7	90.5	"
16	Grandview	Portland		16	217	83.3	"
16	Portland	Grandview	Sunnyside	16	224	10.0	"
19	Sunnyside	Grandview			7	39.3	"
19	Grandview	Tacoma			247	80.6	"
19	Tacoma	Grandview	Sunnyside		254	65.6	"
24	Sunnyside	Portland	Sunnyside	32	414	75.6	"
25	Sunnyside	Portland	Sunnyside	32	414	100.0	"

[Endorsed]: No. 12232. United States Court of Appeals for the Ninth Circuit. Melvin E. Waller, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Eastern District of Washington, Southern Division.

Filed April 25, 1949.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

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In the United States Court of Appeals  
For the Ninth Circuit

No. 12232

UNITED STATES OF AMERICA,  
Plaintiff-Appellee,

vs.

MELVIN E. WALLER,  
Defendant-Appellant.

STATEMENT OF POINTS AND DESIGNA-  
TION UNDER RULE 19, SUBDIVISION 6

In compliance with Rule 19, Subdivision 6 of the rules of the above-entitled Court, the appellant herewith adopts the Statement of Points filed in the United States District Court for the Eastern District of Washington, Southern Division, as the statement of the points upon which he intends to rely on this appeal.

In further compliance with said rule the appellant designates, as that portion of the record which is material to the consideration of this appeal, all the certified record, pages 1 to 324 inclusive, which is filed in this Court.

Dated this 20th day of April, 1949.

/s/ WALTER J. ROBINSON, JR.,  
Of Counsel for Defendant-Appellant.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed April 26, 1949. Paul P. O'Brien,  
Clerk.